IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

SVV TECHNOLOGY INNOVATIONS, INC.	*	
	*	September 26, 2024
VS.	*	
	*	CIVIL ACTION NO. 6:22-CV-311
ASUSTEK COMPUTER INC.	*	

BEFORE THE HONORABLE ALAN D ALBRIGHT
JURY TRIAL PROCEEDINGS
Volume 4 of 4

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Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

08:36

(Hearing begins.)

08:36 THE COURT: I understand there's an issue that you want to raise.

08:36 MR. BURESH: Yes. Briefly, Your Honor.

08:36 THE COURT: Whatever time you use raising this is coming out of your time for closing. So do whatever you feel best.

08:36 MR. BURESH: Okay. Very briefly.

08:36 I don't want there to be any surprise when the rebuttal witness comes up, and so just putting everyone on fair notice. There's two paths this can take. The question here is: When was that picture that we saw yesterday taken? And if it's taken here in court, that's the testimony, I'll simply cross-examine the witness, no big deal.

08:37 If the testimony is that the picture was taken somewhere outside of court, okay, with additional setup and preparation, then I'm going to be raising the issue in front of the jury that --

08:37 Can you give me the ELMO briefly?

08:37 -- that what we were reacting to yesterday and what the witness was reacting to is the witness asked a question: These micrographs were taken in court yesterday?

08:37 And Mr. McCarty said: Yes.

08:37 The witness said: Sir, I don't believe that was possible.

08:37 THE COURT: Did he do it here in court or not? I'm asking.

08:37 MR. CALDWELL: I don't know if he snapped, if he pushed the --

08:38 (Clarification by Reporter.)

08:38 THE COURT: I want to know what -- just tell me what he did.

08:38 MR. CALDWELL: This was when he -- when Mr. Credelle stepped down and gave the demonstration and zoomed in on exactly that part, it's that image. But I don't know if he pushed the capture there or the capture's from another date.

08:38 What he's going to testify to, what I thought he was testifying to pursuant to literally what you told us last night is, you said he's going to get on the witness stand and say it is possible.

08:38 Because remember they made this argument, you can't do it with your microscope. And you said last night he's going to get on the witness stand and say it is possible because I did it, and that's what he's limited to tomorrow. So that's literally what I was going to ask him because that was your order.

08:38 What I don't know is if that exact

capture is from that moment or in the breakout room or whatever. It's the same exact panel we've shown over and over and over with the same exact microscope.

MR. BURESH: And, Your Honor, I have testimony from their witness that he could not even see the image in court because he could hardly read the model number. And this is what I'm responding to, Your Honor.

When I raised an objection, Mr. McCarty said: This is the picture we did in court yesterday with Mr. Credelle who's sitting right there. He cross-examined Mr. Credelle on this picture.

I responded: There was literally no picture done in court yesterday.

And Mr. McCarty said: Yes. It is.

That picture was not taken in court. Okay? I don't -- there was no way to even see the image in court. You could not even read the model number, much less see these tiny little microcosms that they're pointing to with these -- the pictures they showed yesterday look like wedding pictures, they were so clear. And I'm telling you they were not taken in court. That's what I was responding to yesterday.

I do not believe that Mr. McCarty was forthcoming with the jury, with the witness, or with

this Court in response to my objection. And I want to point that out to the jury if they put this witness on the stand. And that's all I have.

Do you need to see this further?

THE COURT: We'll bring them in. Plaintiff can call him. You can cross him and then we'll finish.

MR. BURESH: Thank you, Your Honor.

THE BAILIFF: All rise.

(Pause in proceedings.)

THE BAILIFF: All rise.

THE COURT: Please remain standing for the jury.

(Jury entered the courtroom.)

THE COURT: Thank you. You may be seated.

Ladies and gentleman of the jury, we have one more witness to take up, and I've given each side about five minutes to examine or cross-examine that witness.

If you'd like to call him.

MR. CALDWELL: Actually, plaintiff rests, Your Honor.

THE COURT: Okay. Very good.

Well, not very good because that means I

have to start reading, but very good. And so...

Yes. Okay. You all have this charge in front of you? Do y'all have a copy?

JUROR: I can't hear.

(Off-the-record discussion.)

THE COURT: Okey-dokey.

Members of the jury, it is my duty and responsibility to instruct you on the law that you are to apply in this case. The law contained in these instructions is the only law that you may follow. That is your duty, to follow what I instruct you the law is regardless of any opinion you might have as to what the law ought to be.

Each of you has your own printed copy of the final -- each of you has your own printed copy of the final jury instructions. There is no need for you to take notes but, of course, if you want to, you can.

If I have given you the impression during the trial that I favor either party, you must disregard that impression. If I've given you the impression during the trial that I have any opinion about the facts in this case, disregard that impression because you are the sole judges of the facts. Other than these instructions on the law, disregard anything I may have said or done during the trial when you're arriving at

your verdict as judges.

You should consider all the instructions about the law as a whole and regard each instruction in light of the others without isolating a particular statement or paragraph. The testimony of the witnesses and other exhibits introduced by the parties constitutes all of the evidence.

The statements of counsel are not evidence. They are only arguments. It is important for you to distinguish between the arguments of counsel and the evidence upon which the arguments rest, but what the lawyers say or do is not evidence. You may, however, consider their arguments in light of the evidence that's been admitted and you as judges determine whether the evidence admitted in this trial supports those arguments.

You must determine the facts from all the testimony that you've heard and all of the evidence admitted. You are the judges of the facts, but in finding those facts, you must apply this law that I instruct you.

You're required by the law to decide this case in a fair and impartial and unbiased manner based entirely on the law and on the evidence presented to you here in the courtroom. You may not be influenced

by passion or prejudice or sympathy that you might have for either party in arriving at your verdict.

After the remainder of these instructions, you'll hear closing arguments from the attorneys. These are statements and arguments and I remind you are not evidence and not instructions on the law. They're intended to assist you in understanding the evidence and the parties' contentions.

A verdict form has been prepared for you.

This is incorrect. At some point I will fix this in the future.

The verdict form will be back in the jury room for you. Once you have reached a unanimous decision or agreement as to the verdict, you will have your foreperson fill in the blanks in verdict form, date it, and sign it.

And also to give you a little notice in advance, when we come back in and I render the verdict that you've given me, I'm going to ask each of you to stand up to reflect that you are in support unanimously of the verdict.

Answer each question in the verdict form from the facts as you find them to be. Do not decide who you think should win the case and answer the questions to reach any result. Your verdict must be

unanimous.

Let's talk first about what is evidence.

The evidence that you are to consider of the testimony of the witnesses, the documents and other exhibits admitted into evidence -- there was a stipulation in this case which I read to you and which the lawyers agreed to -- and any fair inference and reasonable conclusions you draw from the facts and circumstances that you as judges believe have been proven. Nothing else is evidence.

Generally speaking, there are two types of evidence. One is direct, such as the testimony of an eyewitness. The other is indirect or circumstantial, which is evidence that proves a fact from which you can logically conclude a different fact exists.

As a general rule, the law makes no distinction between direct and circumstantial evidence. It simply requires you as the judges to determine from the facts all the evidence that you hear in this case, whether it's direct or circumstantial or a combination of both.

As I instructed you before the trial began, in judging the facts, you must consider all the evidence, both direct and circumstantial. But that

does not mean you have to believe or accept all of the evidence you heard. That is why you're here as judges.

It is entirely up to you to give the evidence you receive in the case the weight you individually believe it deserves. It's up to you each to decide which witness to believe or not, the weight you give any testimony you hear, and how much of any witness' testimony you decide was -- you will accept or reject.

Remember that during the course of trial, there were objections, but those objections were not evidence. They may have objected -- the attorneys may have objected if they thought documents or testimony that were being offered into evidence were improper under the rules of evidence.

I ruled on those, but my legal rulings as to the objections are also not evidence. If I made questions -- if I made comments or asked questions, those are not evidence. Do not ever be influenced by any ruling that I made on any objection. If I sustained one, then pretend the question was never asked. If there was an answer given, ignore it.

I often -- a couple of times I told you to disregard it. You must do that as well.

If I overruled an objection, act like the

objection was never made. If I gave you instructions that some type of evidence was received for a limited purpose, follow that instruction. If I gave any limiting instruction during trial, follow it. Any testimony I tell you to exclude or disregard is not evidence. You may not consider it.

You are not going to conduct any investigation at this point. You're going to be deliberating after this. So I'll skip that.

You alone are to determine the questions of credibility or truthfulness of the witnesses. In weighing the testimony of the witnesses, you may consider the witness' manner and demeanor on the witness stand, any feelings or interest in the case, any prejudice or bias about the case that he or she may have had, and the consistency or inconsistency of their testimony considered in the light of all the circumstances.

Was the witness contradicted by other credible evidence? Did he or she make statements at other times in places contrary to those made here on a witness stand?

You must give the testimony of each witness the credibility that you as judges believe it deserves.

In determining the weight to give the testimony of a witness, consider there was evidence at some other time the witness said or did something or failed to say or do something that was different from the testimony given by any of the witnesses at trial.

Even though a witness may be a party to the action and, therefore, would be interested in its outcome, you may still accept their evidence if it was not contradicted by direct evidence or by a different inference that could be drawn from the evidence so long as you believed their testimony.

A simple mistake by a witness does not necessarily mean that the witness did not tell the truth as he or she remembered it. Remember, we are all people. We forget things. We remember things inaccurately.

If a witness made a misstatement, consider whether the misstatement was intentional or just a mistake. The significance of that may depend on whether it has to do with an important fact or an unimportant detail, but at all times it is exclusively in your province as the judges to accept and believe every word a witness said or disregard everything they said or somewhere in between because you are the exclusive judges of the facts in this case.

Remember this: You are not to decide the case by counting the number of witnesses who testified for either side. Witness testimony is weighed. Witnesses are not counted. The test is not the relative number of witnesses but the relative compelling or convincing force of their evidence.

Remember, the testimony of even a single witness is sufficient to prove any fact even if a greater number of witnesses testified to the contrary if, after considering all the evidence, you believed that evidence.

Certain testimony was presented to you in the form of a deposition. A deposition is the sworn recorded answers to questions a witness was asked in advance of trial.

There's circumstances where a witness cannot be present to testify live from the witness stand. Therefore, that witness' testimony may be presented under oath in the form of a deposition. That means that sometime before this trial, attorneys representing the parties in this case questioned the witness under oath. There was a court reporter there who was present and recorded the testimony.

The questions and answers were read or shown to you. The testimony -- the deposition

testimony is entitled to the same consideration and is to be weighed and otherwise considered by you in the same way as if the witness had been present and had testified from the witness stand.

You heard testimony from a witness in this case or -- who testified in the Chinese language through an interpreter. Witnesses who do not speak English or who are more proficient in another language testified through an official court interpreter.

Although some of you may know the Chinese language, it is important that all jurors consider the same evidence. Therefore, you must accept the interpreter's and check interpreter's translation of the witness testimony. Disregard any different meaning.

You must not make any assumption about a witness or party based solely on the use of an interpreter to assist that witness during trial.

Let's talk about expert testimony, which is testimony from a person who has a special skill or knowledge in some science or profession or business which is not common to the average person but has been acquired by the expert through special study or experience.

When you're weighing expert testimony,

consider their qualifications, the reasons for their opinions, the reliability of the information that supported those opinions, as well as all the factors I've given you for weighing the testimony of any witness.

Expert testimony receives whatever weight and credit you as the judges think is appropriate given all the evidence in the case. You are not required to accept the opinion of any expert. Rather, you are free to accept or reject the testimony of experts just as with any other witness.

A stipulation is an agreement. When there's no dispute about certain facts, the parties may agree or stipulate to facts. If a fact is stipulated to, you must accept the stipulated fact as evidence and treat that fact as having been proven here in court.

Two stipulations were provided in this case. One is regarding representative products and has been entered into the record as JTX-5.

The other is that the parties agree that for the purpose of assessing the issue of infringement in this case, you should treat ASUSTeK Computer Inc. and it's wholly owned subsidiaries as one actor, that is, an act of infringement by an ASUSTeK, a wholly owned subsidiary, would constitute an act of

infringement by defendant ASUSTeK Computer Inc. SVV, the plaintiff, still has the burden to prove infringement.

And to go off script just a bit, when we finish, after the closing arguments and you go back, we no longer have physical exhibits. The exhibits will be on a monitor. And Jen will come back there and help you show -- figure out how it is that you run through the exhibits.

So with respect -- were there interrogatories in this case that were read? I don't think so.

MR. CALDWELL: I think an interrogatory was referenced in a cross but not read aloud.

THE COURT: Okay. Well, let me go ahead and say what it was. Thank you.

Evidence has been presented to you in the form of answers of one of the parties to a written interrogatory submitted by the other side. These answers were given in writing and under oath for the trial in response to questions that were submitted under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

The fact that one side or the other

brought this lawsuit and is in court seeking damages creates no inference on their behalf that they're entitled to judgment.

The act of making a claim in a lawsuit, in this case claims of patent infringement, does not tend to establish the claim is true or not true and cannot be considered by you as evidence. Also, the fact that the defendant raised arguments against the claims that they don't infringe creates no inference that they are entitled to a judgment.

Both of these actions, the offensive action of filing the suit and the defensive action of defending a suit, are to be disregarded by you. None of those actions have anything to do with establishing a judgment in either favor.

Certain exhibits were shown to you, such as PowerPoint presentations, posters, models, and they are illustrations of the evidence, but they are not themselves evidence. They are known as demonstrative exhibits, which is a party's description, picture, or model used to describe something involved in this trial. If your recollection of the evidence differs from a demonstrative exhibit, rely on your recollection.

I will tell you in advance, occasionally

we have -- jurors send a question saying we can't find a certain exhibit. If you have that problem, there's a great likelihood it's because it was a demonstrative exhibit and you don't have it back in the room with you. But you're still welcome to send any questions you want.

Certain charts and summaries have been shown to you solely to help explain or summarize the facts disclosed by the books, records, and other documents that are in evidence. These charts and summaries are not evidence or proof of any facts unless I admit a chart or summary into evidence.

You should determine the facts from the evidence. Do not let bias, prejudice, or sympathy play any role in your deliberations. Whether you are familiar with one party or the other should not play any part in your deliberations. Remember at all times that a corporation and all persons are equal before the law. They must be treated as equals in a court of justice.

We're about to turn to a burden of proof, which is why you're here, is to determine whether or not the parties have met their burden of proof.

In any legal action, facts must be proved by a requirement of evidence known as the burden of

proof. In this case there is only one burden of proof, and it is on the plaintiff, and it is called a preponderance of the evidence.

What does that mean? That means that plaintiff has the burden of proving patent infringement and damages by a preponderance of the evidence, which means evidence that persuades you that a claim is more probably true than not true. We can discuss this as the greater weight and degree of credible testimony. You may think of this preponderance of the evidence standard as being slightly greater than 50 percent.

Let me read you the contentions in this case. I'm -- after I read the contentions, I'm going to tell you what each party must do to prove or win on its contentions.

The plaintiff is the owner of patents at issue in this case, which are United States Patents No. 9,880,342, 8,290,318, 10,439,089, and 10,627,562.

The plaintiff contends that defendant infringes either directly or indirectly Claim 1 and 21 of the '342 patent; Claim 3 of the '318 patent; Claim 19 of the '089 patent; Claims 1 and 7 of the '562 patent. These are all known as "the asserted claims."

The plaintiff alleges that defendant infringes its patents through importing, making, using,

offering for sale, and/or selling the accused products. They include laptops and computer monitors with backlighting designs alleged to unlawfully practice the inventions disclosed in the asserted patents. They are referred to as the "accused products."

Defendant alleges -- I'm sorry -- plaintiff alleges that it is entitled to damages and that defendant's infringement has been willful.

Defendant denies that it has infringed any of the asserted claims of the asserted patents.

And it is your job as the judges to decide whether or not defendant has infringed any of the asserted claims.

If you decide that any asserted claims have been infringed, it is then up to you to decide any money damages to be awarded to plaintiff to compensate it for infringement.

If you decide that there was any infringement of the asserted patents and that such infringement is willful, your decision as to willfulness should not affect any damages that you might award. It is up to me to take into account the willfulness issue after the trial.

Before you can decide many of the issues in this case, you need to understand the role of patent

claims.

Patent claims are the numbered sentences at the end of each patent. The claims are important because it is the words of the claim that define what a patent covers. The figures and text in the rest of the patent provide a description and/or examples of the invention and provide a context for the claims, but it is the claims that define the breadth of the patent's coverage. Therefore, what a patent covers depends in turn on what each of the claims cover.

To know what a claim covers, a claim sets forth in words a set of requirements. Each claim sets forth its requirements in a single sentence. The requirements of a claim are often referred to as elements or limitations.

The coverage of a patent is asserted on a claim-by-claim basis. When a thing such as a product or process meets all the requirements of that claim, the claim is said to cover the thing or that the thing is said to fall within the scope of the claim. A claim covers a product or process when each of the claim elements or limitations is present in the product or process.

You first need to understand what each claim covers in order to decide whether or not there is

infringement of that claim.

It is my role to define the terms of the claims. It is your role to apply my definitions of the terms I have construed to the issues that you are asked to decide in this case. As was explained to you at the start of the case, I determined the meaning of certain claim terms identified by the parties. I have provided to you my definition of certain claim terms.

You should not take my definition of the language of the claims as an indication that I have a view regarding how you should decide the issues that you are here as judges being asked to decide.

For any words in the claim for which I have not provided you a definition, you are to apply what's known as the plain and ordinary meaning of those terms in the field of the patent. Patent claim terms are given the plain and ordinary meaning of those terms as understood by someone who possesses the ordinary skill in the art.

The only correct comparison for infringement is between the accused products and the claim language.

My claim constructions are as follows: Whether the '318 patent claim preamble is limiting. I found that it was not.

Whether the '089 patent, Claims 14 and 19, preambles are limiting. I found that they are not.

For "photoresponsive layer" and "photoresponsive element," for "light input surface," for "cavity" and "cavities," for "prevailing plane," and for "substantially," I gave each of those terms plain and ordinary meaning.

For "TIR" or "total internal reflection," I gave the following construction: The phenomenon that involves the reflection of all the incident light off the boundary between a first medium and a second medium of lower refractive index, when the angle of incidence to the second medium exceeds the critical angle.

I also construed "optically coupled" as meaning providing for transfer of light from one optical component to another.

Again, if I did not construe the other words that are in the claims, that means you give them the plain and ordinary meaning.

You must accept my definitions of these words in the claims as being correct. It is now your job to take the definitions I've given and apply them to the issues that you are deciding, in this case the issue of infringement.

The beginning portion of a claim is known

as the preamble. And it uses the word "comprising." The word "comprising" when used in the preamble means including but not limited to or containing but not limited to. If "comprising" is used in the preamble, if you decide that an accused product includes all the requirements of that claim, it is infringed. That is true even if the accused product contains additional elements.

For example, a claim wherein a table comprises a tabletop, legs, and glue would still be infringed by a table that includes a tabletop, legs, and glue even if the table also included wheels on the table's legs.

You heard throughout the trial about independent and dependent claims. An independent claim sets forth all the requirements that must be met in order to be covered by that claim. It is not necessary to look at any other claim to determine what an independent claim covers.

In this case, the following claims are independent claims: Claim 1 of the '342 and Claim 1 of the '562 patent.

The following asserted claims are dependent claims: Claim 3 of the '318 patent, Claim 7 of the '562 patent, Claim 21 of the '342 patent, and

Claim 19 of the '089 patent are all dependent claims.

A dependent claim does not itself recite all the requirements of the claim but refers to another claim for some of its requirements. In this way, the claim depends on the other claim. A dependent claim incorporates all the requirements of the claim to which it refers. The dependent claim then adds its own additional requirements.

To determine what a dependent claim covers, it is necessary to look at both the dependent claim and any other claims to which it refers. A product that meets all the requirements of both the dependent claim and the claim to which it refers is covered by the dependent claim.

If any requirement of a dependent claim is not met or if any requirement of a claim upon which the dependent claim depends is not met, then the product is not covered by the dependent claim.

On the other hand, if the requirements of an independent claim are met by a product but a requirement of a dependent claim is not met, the independent claim is still infringed.

Let's talk about infringement.

I will now instruct you how to decide whether or not plaintiff has proven that defendant

infringed the asserted claims of the asserted patents.

Infringement is assessed by you as the judges on a claim-by-claim basis. There may be infringement as to one claim that's asserted but no infringement as to a different one.

A patent owner has the right to prevent others from using the invention covered by his or her patent claims in the United States during the life of the patent. If any person makes, uses, offers to sell within the United States what is covered by the patent claims without the patent owner's permission, that person infringes the patent.

There are different ways a claim may be infringed. One is direct infringement. One is induced infringement. Active inducement are referred to as indirect infringement. There cannot be indirect infringement without someone else engaging in direct infringement.

In this case, the plaintiff accuses ASUSTeK of directly or indirectly infringing its asserted patents. In addition, they allege that defendant's subsidiaries and customers directly infringe the asserted patents, and that defendant is liable for actively inducing the direct infringement by defendant's subsidiaries and their customers.

09:07 In order to prove infringement, plaintiff must prove that the requirements for infringement are met by a preponderance of the evidence, that is, more likely than not that all the requirements of infringement have been proved.

In reaching your decision on infringement, keep in mind that only the claims of a patent may be infringed. You must compare the asserted patent claims, as I have defined each to you, to the accused system or process and determine whether there is infringement.

You should not compare the accused system or process with any specific examples set out in the patent or with the prior art in reaching your decision on the issue of infringement. The only correct comparison is with the language of a claim itself as I have explained the meaning to you.

You must reach your decision as to each assertion of infringement based on my instructions about the meaning and scope of the claims, the legal requirements for infringement, and the evidence presented to you by the parties.

Let me explain to you infringement in more detail.

First, let's discuss direct infringement.

09:08 In order to prove direct infringement, plaintiff must
09:08 prove by a preponderance of the evidence that it is
09:08 more likely than not that defendant made, used,
09:08 imported, sold, or offered for sale within the United
09:09 States a product that meets all the requirements of a
09:09 claim and did so without the permission of defendant
09:09 during the time of the asserted patents being enforced.
09:09 You must compare the product with each
09:09 and every one of the requirements of a claim to
09:09 determine whether all the requirements of that claim
09:09 are met. A party can directly infringe a patent
09:09 without knowing of the patent or without knowing that
09:09 what the party's doing is patent infringement.
09:09 Even if the party independently creates
09:09 the accused product or method, it can still infringe.
09:09 You must determine separately for each asserted claim
09:09 whether infringement exists.
09:09 Separate from direct infringement, the
09:09 plaintiff also alleges that defendant is liable for
09:09 infringement by actively inducing third-party ACI
09:09 and/or end sellers -- and/or end users to directly
09:09 infringe the asserted claims, either literally. As
09:09 with direct infringement, you must determine whether
09:09 there's been active inducement on a claim-by-claim
09:10 basis.

Defendant is liable for active inducement of a claim only if plaintiff has proven to you by a preponderance of the evidence the following:

That the acts are actually carried out by ACI and/or end users directly infringe an asserted claim;

Two, that defendant took action that was intended to cause and led to the infringing acts by ACI and/or end users; and

Three, that defendant was aware of the asserted patents and knew that the acts, if taken, would constitute infringement of the asserted claims, or the defendant believed there was a high probability that the acts by ACI and/or end users infringed the asserted claims and took deliberate steps to avoid learning of that infringement.

If you find that defendant was aware of the claims but believe that the acts encouraged did not infringe the claim, then they are not liable for inducement.

In order to establish active inducement, it is not sufficient that ACI and/or end users themselves directly infringe the claim, nor is it sufficient that defendant was aware of the acts by ACI and/or end users that allegedly constitute direct

infringement.

Rather, to find active inducement of infringement, you must find either that defendant intended ACI and/or end users to infringe the asserted patents or the defendant believed there's a high probability that ACI and/or end users would infringe the asserted patents but deliberately avoided learning the infringing nature of their acts.

The mere fact, if true, that defendant knew or should have known there was a substantial risk that purchasers of the accused products or ASUS Computer International would infringe the asserted patents would not be sufficient to support a finding of active inducement of infringement.

In this case, the plaintiff alleges the defendant willfully infringed the asserted patents. If you have decided that ASUSTeK has infringed the claims of the asserted patents, you must then go on and address the additional issue of whether it was willful, which requires you to determine whether plaintiff has proven it is more likely than not that the defendant knew of the asserted patents and that they infringed intentionally or acted with reckless disregard of or deliberate indifference to the asserted patents or willfully blinded themselves to its infringement.

You may find that defendant's infringement was willful if it knew or should have known that its actions constituted an unjustifiably high risk of infringement of a valid patent. You may not determine that the infringement was willful just because defendant was aware of the asserted patents and infringed one or more of them. Instead, you must also find that defendant deliberately infringed the -- at least one of the asserted patents.

You may find that an infringer willfully infringed if you find the infringer's behavior was malicious, wanton, deliberate, consciously wrongful, flagrant, or in bad faith.

To determine whether the defendant acted willfully, consider all facts and assess defendant's knowledge at the time of the challenged conduct. Facts that may be considered include but are not limited to:

Whether or not defendant acted consistently with the standards of behavior for their industry;

Whether or not they intentionally copied a product of plaintiff that is covered by one of the asserted patents;

Whether or not they reasonably believed they did not infringe, that the patent was invalid;

Whether or not ASUSTeK made a good faith effort to avoid infringing the asserted patents. For example, whether defendant attempted to design around the asserted patents; and

Whether or not defendant tried to cover up its infringement.

Your determination of willfulness should incorporate the totality of the circumstances based on all the evidence presented during trial. If you decide that any infringement was willful, that decision should not affect any damage award you give. I will decide that later.

The parties disagree on the level of ordinary skill of art in this case. The plaintiff submits that the appropriate level of ordinary skill is a bachelor's degree in electrical engineering, physics, or optics, and at least three years of relevant industry research or other experience related to optical devices or a general sense -- science degree and five or more years of relevant industry research or other experience related to optical devices. More education/training could compensate for less work experience and vice versa.

The defendant asserts that a person of ordinary skill in the art would have at least a B.S.

degree in physics, electrical engineering, or optics, as well as three years of academic research or industry experience in the field of optical devices. A person of skill in the art with a higher level of education may have fewer years of academic or industry experience or vice versa.

Let's turn now to the issue of damages.

If you find that defendant infringed any of the asserted claims of the asserted patents, you must find -- you must then consider what amount of damages to award to the plaintiff. If you find that defendant has not infringed any claim of any patent, then the plaintiff is not entitled to damages.

The damages you award, if any, must be adequate to compensate the plaintiff for the infringement, but they are not meant to punish. Your damage award, if you reach the case, should not be less than what the patentholder would have received had it been paid a reasonable royalty.

You may not include in your award any additional amount as a fine or penalty above that what is necessary to compensate the patentholder for any infringement.

The plaintiff has the burden to establish the amount of its damages by a preponderance of the

evidence. In other words, award only those damages that plaintiff establishes are more likely than not. While the plaintiff is not required to prove the amount of damages with mathematical precision, it must prove them with a reasonable certainty. You may not award damages that are speculative or only possible or based only on guesswork.

The plaintiff seeks damages in the form of what it contends to be a reasonable royalty. You must be careful to ensure the award is no more and no less than the value of the patented invention.

I'm about to give you more explanation of what a reasonable royalty is now.

A reasonable royalty is the amount of royalty payment that a patentholder and the alleged infringer would have agreed to in a hypothetical negotiation taking place at a time prior to when the infringement first began.

In considering the hypothetical negotiation, you must focus on what the expectation or expectations of the patentholder and the alleged infringer would have been having entered into an agreement at the time and had they been reasonable in their negotiations.

Unlike in a real-world negotiation, all

parties to the hypothetical negotiation are presumed to believe that the patent is valid and infringed and that both parties were willing to enter into that agreement. The reasonable royalty you determine must be a royalty that would have resulted from a hypothetical negotiation, not simply the royalty one party or the other would have preferred.

Evidence of things that happened after the infringement first began can be considered in evaluating what the reasonable royalty should be but only to the extent that the evidence aids in assessing what royalty would have resulted from a hypothetical negotiation that took place immediately prior to the first infringement.

The amount you find as damages must be based on the value attributable to the patented invention as distinct from unpatented features of the accused products or other factors such as marketing or advertising or defendant's size or market position. This is called "apportionment."

A royalty compensating plaintiff for damages must reflect a value attributable to the infringing features of the product and no more.

The process of separating the value of the allegedly infringing features from the value of all

other features and aspects of the product is called "apportionment." When the accused infringing products have both patented and unpatented features, your award must be apportioned so it is based only on the value of the patented features. No more.

In determining the reasonable royalty, you should consider all the facts known and available to the parties at the time the infringement began. Some of the kinds of factors to consider in making your determination are:

The value that the claimed invention contributes to the accused product;

The value that factors other than the claimed invention contribute to the accused product;

Comparable license agreements or other transactions, such as those covering the use of the claimed technology or similar technology.

But no one factor is dispositive. You can and should consider the evidence that's been presented to you in this case on each and every factor.

You may also consider any other factor which in your mind might have increased or decreased the royalty that the defendant would have been willing to pay and that the plaintiff would have been willing to accept if they are acting as normally prudent

09:19 1 businesspeople.
09:19 2 You heard the damage experts discuss the
09:19 3 Georgia-Pacific factors:
09:19 4 The royalties received by the patentee
09:19 5 for the licensing of the patent-in-suit, proving or
09:19 6 tending to prove an established royalty;
09:19 7 The rates paid by the licensee for the
09:20 8 use of other patents comparable to the patent-in-suit;
09:20 9 The nature and scope of a license as
09:20 10 exclusive or nonexclusive or as restricted or
09:20 11 non-restricted in terms of territory or with respect to
09:20 12 whom the manufactured product may be sold;
09:20 13 The licensor's established policy and
14 marketing program to maintain his or her patent
15 monopoly by not licensing others to use the invention
16 or by granting licenses under special conditions
17 designed to preserve that monopoly;
09:20 18 The commercial relationship between the
09:20 19 licensor and licensee such as whether they are
09:20 20 competitors in the same territory and the same line of
09:20 21 business or whether they are inventor and promoter;
09:20 22 The effect of selling the patented
09:20 23 specialty in promoting sales of other products of the
09:20 24 licensee, the existing value of the invention in the --
09:20 25 to the licensor as a generator of sales of non-patented

items, and the extent of such derivative or convoyed sales;

The duration of the patent and the terms of the license;

The established profitability of the product made under the patents, its commercial success, and current popularity;

Continuing, the utility and advantages of the patented property over the old modes or devices, if any, that have been used for working out similar results;

The nature of the patented invention, the character of the commercial embodiment of it as owned and produced by the licensor, the benefits to those who have used the invention;

The extent to which the infringer has made use of the invention and any evidence probative of the value of that use;

The portion of the product or the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the invention or analogous inventions;

The portion of the realizable profits that should be credited to the invention as distinguished from non-patented elements, the

manufacturing process, business risks, or significant features or improvements added by the infringer;

The opinion and testimony of qualified experts;

The amount that a licensor, such as a patentee, and a licensee, such as the infringer, would have agreed upon at the time the infringement began if both had reasonably and voluntarily tried to reach an agreement; that is, the amount which a prudent licensee who desires, as a business proposition, to obtain a license to manufacture and sell a particular article embodying the patented invention, would have been willing to pay as a royalty and yet be able to make a reasonable profit and which amount would have been acceptable by a prudent patentee who is willing to grant a license.

In determining a reasonable royalty, you may also consider evidence concerning the availability and cost of acceptable noninfringing substitutes to the patented invention. An acceptable substitute must be a product that either does not -- that either does not infringe the patent or is licensed under the patent.

You heard about license agreements from both sides. Comparable license agreements are one factor that may inform your decision as to the proper

amount and form of the reasonable royalty award, similar to the way in which the value of a house is determined relative to comparable houses sold in the same neighborhood.

Whether a license agreement is comparable to the license under the hypothetical license scenario depends on many factors, such as whether they involve comparable technologies, economic circumstances, structure, and scope.

If there are differences between a license agreement and the hypothetical license, you must take those differences into account when you make your reasonable royalty determination.

The hypothetical license is deemed to be a voluntary agreement. When determining if a license agreement is comparable to the hypothetical license, you may consider whether or not the license agreement is between parties to a lawsuit and whether the license agreement was a settlement influenced by a desire to avoid further litigation.

I reserve these final instructions until after I hear the closing arguments, and so I will stop at this time and I'll ask plaintiff's counsel if you'd like to begin.

I'm sorry. We need a very quick recess.

09:24 We need a couple of minutes to get set up.

So, ladies and gentleman, please don't discuss anything. When you come back, you'll hear the closing arguments in this case.

THE BAILIFF: All rise.

(Jury exited the courtroom.)

THE COURT: I'm assuming there were no issues to take up with the slides.

MR. BURESH: No, Your Honor.

MR. CALDWELL: May we use the music stand?

(Off-the-record discussion.)

09:33 THE BAILIFF: All rise.

THE COURT: Please remain standing for the jury.

(Jury entered the courtroom.)

THE COURT: Thank you. You may be seated.

MR. MCCARTY: May I proceed, Your Honor?

OPENING ARGUMENT ON BEHALF OF THE PLAINTIFF

MR. MCCARTY: Ladies and gentleman, one week ago we met for the first time downstairs in the courtroom on Thursday for jury selection. I told you then and I'll tell you again now, it's an honor to be in front of you.

I also said it's like drinking from a firehose. And I think that's kind of what it's been. I'd be willing to bet I wasn't too far off with that.

The case has been about, you know, claim charts and cost savings and licenses, laboratories, patents. But let's not forget the simple truth at the heart of this case. At the very heart of this case is a very special company founded by a very humble scientist who created some incredibly useful technology that has benefitted and impacted the world.

And just like his product line shows, his optical lighting technology is not limited to solar. That's how light works. That is how his patent works.

It may feel like weeks ago now, but just Monday morning you heard the testimony of Dr. Sergiy Vasylyev, a brilliant scientist with degrees in physics, math, engineering. Took the chance of a lifetime to come here to the United States 25 years ago with next to nothing, with just his wife and his newborn baby.

You heard at first it wasn't easy. He had two, three jobs at a time. He was working the 9:00 to 5:00 at the county sheriff's department, putting in time with SVV in the nights and weekends. He started in the garage, and now he's in this lab.

09:35 You heard about over time the accolades that started piling up. He started receiving awards. He started receiving his patents. You heard about how entities like the National Science Foundation and the DOE's Office of Science have been selecting SVV's technology over many other companies' technology in this competitive process to find the best lighting solutions. Not solar energy solutions, LED lighting solutions.

09:36 You heard about how he spent years researching and refining this approach to lighting solutions. And he came up with a novel, extremely valuable approach to handling light. And for that, he was granted these four patents that we've been going through all week; that's the '342, the '562, the '318, and the '089.

09:36 Leading up to today, I asked my client if there was anything I needed to get into the record, arguments to make. And his response I think was telling. He said: It's been a long time, it's taken a long time to get here. Please just say thank you for me. So on behalf of him and the company, thank you.

09:36 Now, this was an important day for SVV. If you recall his testimony, he testified how proud he was to get that patent protection. He explained how

grateful he was for our system that protected his company. That protected his inventions. And that's why we're here.

After many years since filing those applications, getting those patents, the market had caught up with the features that he worked on and patented beginning in 2009, 2010.

The evidence showed that he was able to source an ASUS monitor. He was able to source two other companies' monitors, Samsung and MSI. What did he find when he cut those open? He found that Samsung and MSI were using his technology; not to the same extent as ASUS.

With ASUS, what he found was that they had implemented his patented technology to a significant degree. A significant percentage of their products were using it, you know, the hundred models in this case, millions of sales just in this country.

And that leads us to the first issue. Infringement. We've been talking about it all week. Let's start with the test and the burden.

So the burden of infringement that we have to prove is a preponderance of the evidence. You heard that early and often in this case. And I talked to y'all about that in jury selection. I give the

patent -- or the football analogy of kind of get to the 50-yard line plus an inch or plus a yard. And I think we've done that. I think we've gone all the way to the end zone.

Now, let's start with the test. This is where there was a dispute in the case. You might have noticed I was getting frustrated asking questions of Dr. Goossen yesterday, their technical expert.

Part of it is we've actually never seen something like what he was doing. Dr. Goossen's arguments seemed like a choreographed effort to confuse the standard for patent infringement. His premise and his arguments were that the patent rules sort of didn't apply and that we should be looking at the figures and the specification for patent infringement.

Luckily, as you just heard, the Judge has clarified through the instructions the following: You got to keep in mind that only the claims of a patent can be infringed. You must compare the patent claims to the accused products. You should not compare the accused system or process with any specific examples in the patent. And the only correct comparison, the only correct comparison is with the language of the claim as I've explained the meaning to you.

So with those judges -- with the Judge's

clarifying instructions on infringement, distractions aside, I'm going to show you right now, we knocked it out of the park. We proved infringement.

Now, there's two types of infringement, direct infringement and indirect infringement.

You'll hear -- I think on Day 1, there was maybe a dispute about indirect infringement or induced infringement. But if you'll recall, the Judge instructed you that ASUS has agreed that they are liable for the actions of their subsidiary now. So they've kind of taken that issue off the table.

But we believe that the direct infringement accounts for the infringement in this case, and the induced infringement is sort of redundant now.

So what did we show you on the infringement side? Remember for infringement, it's the claims that matter, and we showed you the claims.

For infringement, we brought you a leader in the field of optics and LCDs, Mr. Tom Credelle. He worked at RCA. He helped invent the LCD displays at their company. He developed the first million-pixel LCD for the U.S. military. He led a team at Apple that were working on their LCDs for their laptops.

He knows light. He knows LCD monitors.

And he analyzed these patents, and he testified that he wanted to make sure that this was a good case with strong merit before he got involved, and that's exactly what he did. And when he was convinced that this case had strong merit, he came on board and he came to analyze these products and testify about infringement to you for the four patents at issue in this case.

So just to reorient y'all, those four patents, the '342, '562, '089, and '318, we have representative products for those four patents. And we show them on the screen here. You'll remember the '342 and '562 are really the bulk of the products, and then there's some quantum dot products related to those later two -- later two patents.

So let's start with the ones I've talked, the '342 patent, our first representative product. Mr. Credelle performed a detailed teardown live in court and demonstrated how that worked. He showed you the evidence of the light guide plates. He showed you the images, analysis, and data for the lenses. He showed you all that data for the 27-degree panel and the microcavities, the LED panel and lighting, and how the light is optimized using TIR, total internal reflection, just as it is claimed in the patents.

Likewise, Mr. Credelle just went through

the limitations of the '562 patent for the other representative product, JTX-005, using the evidence in PTX-116. And, of course, it was extremely similar. He showed you all the same data, images, analysis, tests for the specific light guides that infringe the '562 patent.

He showed you the cross-section analysis, the 3D microscope, the linear lenses, the microcavities, and the edge lighting. Showed you all that information. He went through it box by box and checked all those boxes.

And again, a specific flow for this '562 patent, he showed you how that works using total internal reflection.

So I kind of just went through all that evidence that we showed you real quickly because I know y'all have been paying attention. I've been seeing you guys take a lot of notes, pay attention. You've been very attentive.

What I want to focus on now are ASUSTeK's actually kind of plain-term-based noninfringement arguments that they've been trying to tell you about.

So for the '342 patent, they brought Dr. Goossen to say there was no alignment between the microcavities and the lenses. They're essentially

saying that -- they're trying to convince y'all that these high-end lighting panels do not even align the two main features that have to work together.

They're essentially arguing that there's, you know, checkers on a checkerboard or something like that. And that's just not credible. These are designed products that are not just thrown together indiscriminately or glued together haphazard. It's just not supported by the record. Mr. Credelle explained it's not just happenstance. The way these are designed are intentional, predetermined patterns done by a computer design. It's not a roll of the dice.

Mr. Credelle showed you the computer-generated model number confirming what that was. He did a live demo with the microscope showing that design ID number that corresponds to the predetermined alignment in the pattern of microcavities as well as the lenses. And what did he confirm? He confirmed that the dots match up between models. Between models. Because they are predetermined in their design.

And this makes sense. Once you optimize the pattern for a particular product, you keep making that same product, in this case to the millions, right,

and you don't want them different as between each product.

So you can actually compare and see that it's the same pattern. It's predetermined. It's predetermined, right, because they're trying to optimize efficiency. That's what these patents are about.

So they test it, they predetermine it. And then once they've got the right mix, the right pattern, then it's repeated. It's a predetermined pattern.

Now, the only evidence ASUS has for this is Dr. Goossen saying that he just doesn't know how they're made. You can see the testimony here. He's not quite sure how they're manufactured.

I imagine it's something like spilling checkers on a board, I think he said, but that doesn't make sense. Sometimes all the light on the other side, he doesn't -- he doesn't know.

So even then, he has to admit these are made using a computer. But did you catch why Dr. Goossen claimed he had no idea how these products are made? Did you catch why? I think this was telling. This says it all.

He asked ASUS to get in contact with

their suppliers overseas in China. He wanted to see the data to see if what he was saying was right.

And what did he say? He got shut down. Dr. Goossen did not know how the products were made, and when he asked to see them, he was told they were not accessible. The company with the products, their name's on the front of the products, they can't even put him in touch with their panel suppliers so he can check his theories.

So what did Dr. Goossen know? He knew -- he said he took some pictures. He didn't show you any. He said he took some pictures of himself, himself and his lab, and they matched the pictures of Credelle.

What does that mean? It's exactly what I told you. They're predetermined. They're predetermined alignment. They match. That's an admission right there.

So then they try to argue there simply can be no alignment by trying to limit the claim to an example in the patent. This is another Dr. Goossen. He doesn't know how the products were made. He bases his infringement opinion on showing that the figures show this alignment.

What do we know? The Court has told us you can't base your infringement opinion on what the

figures in the patent look like. You got to look at the claims.

Now, we went through this yesterday. This is that predetermined alignment, and we walked through the specification which clearly states, right, that this invention is not limited to this configuration and can also be implemented where these red lines are off kilter, right, according to the predetermined pattern.

We've walked through that. It's part of the invention. It's a design feature of the invention. It's not a random checkerboard. It's how they're made. That's the point of this.

You want to optimize for efficiency. And guess what? What happens when you do it right? It tells you right there. You get the angular spread that you want, the desired angular spread, that viewing angle. That's the point.

So if they come up here and tell you, you know, if you use this invention, you get a bad viewing angle because it's a narrow beam, you know that's not true. We saw all those films go between you and the screen, for the screen and the light, to help spread out that viewing angle. That's their role. This is to optimize that.

Now we go to the '318 patent. Let's cut to the chase. Since ASUSTeK agrees on most of these limitations, they're really only disputing the broad-area input surface. That's that yellow.

Mr. Credelle identifies that yellow not because it's like happenstance or chance or something. Again, this is how they're designed. This is designed to take in the light from the back reflector sheet.

Every time they show you something on this patent, they've removed that reflector sheet. They don't want you to know that's the design of the product. The input surface is so it can take in the light from the reflector sheet. It's 50 percent of the light. Half of the light that goes to that light guide plate, it's actually coming through that surface. It's not incidental. It's designed that way.

Dr. -- Mr. Credelle further explained that the prevailing direction of the light is right there, through that yellow surface. This is way more than reasonably capable. It's designed that way, and that's why it infringes.

The Court's instructions are clear on this point. Right? Because they say, well, there's also an input surface from the light, the LED light that comes in from the bottom. They say, how can you

have two input surfaces? That's not a defense to infringement.

We hear it right here. If you have additional input surfaces, that's okay. Additional elements do not negate infringement. A lot of products have that, right? You're going to have multiple surfaces, multiple features.

Now, the '089 patent, this one is kind of the most incredible. It's clear what's going on here.

The claim requires that the light guide plate with the lenses be distributed over an area of quantum dot film. When you put them together, it is matching perfectly. It's a perfect match. They're distributed over the area of one another.

Just like that grate up there is distributed over the area of the AC, right? Even though it's vertical, it's distributed over that area the whole way. It's the same exact way in the patent and in the product.

So what do they have to do? They have to deflect and say, well, it's my opinion that the claim requires a geometric coordination. That's what he told me on cross-examination.

There's the claim right there. Where's the geometric coordination? It doesn't say that.

09:49 There's no such thing as a geometric coordination in the claim. You got to stick to the claims. It's just not in there.

09:50 Now, what we do see in the products is that there's a full distribution over an area of the quantum dot film of those lenses. So the patents infringe because we know that the lenses match the entire area of the quantum dot film. It's a perfect match. I held them up. There's no overlap. There's no missing edges. It's a perfect match. One to one.

09:50 Now, where do we go from here, right? Let's talk about how we get here.

09:50 Remember that when SVV started seeing their inventions in some of these products, the minute they saw that, it was within their rights to bring the action. That's how patent -- you know, patent law works. They can bring that action.

09:50 But they didn't do it. They reached out. They wanted an amicable resolution. They wanted to talk licensing and do business that way. They tried to do the right thing, started the discussion.

09:50 He insisted -- as we talked about, you saw in the e-mails that his representatives, his people were respectful, polite. This wasn't a shakedown. We heard "gun to the head." That was offensive.

There's nothing violent or extreme about any of this from our side. Respectful and polite the entire time.

When they asked us, hey, go give us some claim charts. We knew it was going to take a long time. Dr. Vasylyev talked about it. It was going to take six months. He created 40 claim charts. They're stacked this high, cut open dozens of products.

And it's not like you just pop open a product and take a peek. You saw the data. You do the 3D microscope, do the cross-section images, you got to be in the lab. It took him six months, but he did it late nights. He's got a family with kids, but he was working because it's important to him.

So when he gets back to them with the claim charts, what does he say? They say basically, just kidding. We're not the appropriate people to talk to. These are our products with our name on them, selling in the United States. We're taking the profits on it, but you probably should talk to the panel manufacturers.

And that's the thing. Do you think he had a chance to talk to the panel manufacturers when they won't even let their own expert talk to the panel manufacturers? It doesn't make sense. It's

09:52 misdirection.

09:52 Incredibly, the reason that they gave
09:52 Dr. Vasylyev and SVV as to why they couldn't put him in
09:52 touch with the panel manufacturers is they didn't have
09:52 their contact information for all of them, and they
09:52 didn't exactly know who they were.

09:52 In this courtroom, we know that that
09:52 wasn't true. Mr. Lee came in here and talked about --
09:52 he knows. He's got at least five or six of them.

09:52 So on the one hand, they're telling us
09:52 they don't know who makes the panels. They don't know
09:52 how to contact them. They don't have their, like,
09:52 phone number, their e-mail address for all these
09:52 companies. They're doing million-dollar product deals,
09:52 and they don't have a contact or a rep.

09:52 And on the other hand, they're admitting
09:52 that they work closely with these guys. And so we saw
09:53 roadblocks, misdirection, deflection.

09:53 This is where the rubber meets the road
09:53 on this case, I think. Dr. Vasylyev did the teardowns,
09:53 did the lab work, did the testing. Mr. Credelle did
09:53 all those things. He showed you all the evidence.

09:53 From their end, they didn't take -- tear
09:53 down the monitors. They didn't show you the pictures.
09:53 They didn't do the tests.

09:53 Dr. Goossen testified he wanted more information, but he was denied it.

09:53 If you're falsely accused -- we heard that in opening. We heard that in jury selection. If you're falsely accused, aren't you going to, like, cut open one of these things and take a look? Aren't you going to do the work, get in the lab? Got all these engineers, all these lawyers. Get some data?

09:53 If you're coming to clear your name, is this how your witness answers this question? If Dr. Vasylyev and SVV would prefer to avoid litigation, what do they have to do to get somebody, anybody at your company who's technical to read the patents?

09:54 Right there. They're burying their head in the sand, and that's willfulness.

09:54 The Judge just instructed you willfulness requires you to determine whether SVV proved that it is more likely than not that ASUSTeK knew of the patents, we know that; acted with reckless disregard, we know that; deliberate indifference, we know that; willfully blinded itself, we know that.

09:54 Some additional factors for willfulness that we can talk about, whether or not they have a defense that the patent is invalid. You didn't hear one peep about that. They're not saying the patent is

09:54 invalid. They made no efforts to design around. Every
09:54 time we asked them, hey, do you have any NIAs,
09:54 noninfringing alternatives, they say, no. Not even
09:54 going to go look for them.
09:55 Did they try to cover up their
09:55 infringement? Yeah. They did. They did. They played
09:55 keep away on who was making it. If we could or could
09:55 not talk to them.
09:55 They're not interested in changing
09:55 anything or looking to stop their infringement. They
09:55 claim they're here to clear their name. They say
09:55 they're here to stand up for the ASUS name.
09:55 They're not here to clear their name.
09:55 They're here to keep the entire $21 per unit in their
09:55 pocket. That's the point of this. It's money.
09:55 Use your common sense. It's pretty easy
09:55 to put together. They're not clearing their name.
09:55 This isn't about Bible verses. This is not about, you
09:55 know, noninfringement, any of that. This is about
09:55 money for them.
09:55 You heard about how there's other
09:55 products out there that don't infringe. ASUS has some
09:55 of those, that doesn't have SVV's technology in it.
09:55 But at every single turn, they choose to use our
09:56 technology because it saves them money.

09:56 On that note, let's talk about damages.

09:56 Pete, could I go to 67?

09:56 We brought you Dr. Farber. He presented his damages opinions, as you recall. And this is the math. He carefully went through this analysis, and he did a sophisticated regression analysis that we'll get to in a second.

09:56 But why did he do that? I think it was mocked a little bit in court. Why did he do that? He did that because the law says in order to assess a reasonable royalty, you got to look for the use made of the invention by the infringer.

09:56 Who is the infringer in this case? It's ASUSTeK. It's not Samsung. It's not MSI. It's not some other company. It's not the panel manufacturers. It is ASUSTeK.

09:56 So what we have to do is value how these patents are being used by ASUSTeK. How are they using them? What benefits are they getting?

09:56 And so we ran the regression which is the way to statistically hone in on the precise amount of money they get for using our invention. He showed you the detail of his regression. He showed you the results of his regression. $21 every time they sell one of these things in cost savings.

09:57 He talked to you about how he did all this analysis to ensure that it was accurate and correct, and the result was as follows.

09:57 Now, what's interesting is that for every monitor that ASUS sells with SVV's technology in it, under our model, under Dr. Farber's model, ASUS still gets to keep $7.41 every time. So every time they infringe, they still make money. Sounds like a pretty good deal for them.

09:57 And we know they'd take the deal, right? You remember this from Mr. Lee's testimony. It's common sense. Of course, they're going to -- of course they're going to take that deal.

09:57 So this is the final result. $13.96 would be the split for how we -- they would break up that $21 with $13.96 going to SVV and ASUSTeK keeping the rest. We know that they sold almost 4.2 million units, specifically 4,199,168. And you can do the math; that equals $58,632,139.

09:58 So quickly, how do they respond? So first they try to sort of, I guess, shame doing a regression, calling it a political poll, something like that. That's -- that's total nonsense. In these cases, regressions are used all the time. It's a model that has won Nobel Prizes. It is an accepted

09:58 methodology for how to value in these types of cases.

09:58 So what do they say next? Well, they

09:58 say -- they bring Mr. Ferioli to suggest it's only $14

09:58 per monitor as a cap.

09:58 Here's the thing. Mr. Ferioli, he's not

09:59 a technical guy. And that's okay. He asked for help.

09:59 In order to get that $14-a-unit cap, he needed a

09:59 technical guy to help him named Dr. Coleman.

09:59 Here's the thing. On Thursday, jury

09:59 selection, ASUSTeK said: We're bringing Dr. Coleman to

09:59 support their damages case, to support Ferioli. See it

09:59 right here.

09:59 Dr. Coleman told Mr. Ferioli what he

09:59 should be measuring for damages in this case, what the

09:59 benefits of the patents are. It's a technical issue.

09:59 But Dr. Coleman is wrong about that.

09:59 Here's the thing. We were going to prove

09:59 it. That's why he didn't come here and have his

09:59 opinions sifted through on cross-examination. It's not

09:59 credible. Ferioli knew it too, that if Dr. Coleman

09:59 came, he would have to be cross-examined.

09:59 What's that mean? The Judge instructed

10:00 us: The only evidence that you are to consider in this

10:00 trial is what you hear from this chair. The fact that

10:00 other people outside of the courtroom may have said

things is completely irrelevant to your decision in this case.

You know who never sat in that chair? Dr. Coleman. You know who never had to answer the tough questions that can get a little frustrating sometimes? Dr. Coleman. Who never had to justify their opinions, what they're saying about the case? Dr. Coleman.

So they want you to look at Samsung. And that's what this case comes down to. They want you to look at Samsung. They don't have sales data. They put up big numbers because Samsung is a big company. And then, of course, they're saying: Oh, we'll keep out the washing machines. We're not going to go for the ironing boards and all that other stuff they make.

But they put up big numbers, flashed that around and said: Oh, look at that. Pennies on the dollar we should get. We already know the evidence is that they've got like seven monitors that they put this in, whereas we know there's like 100 from ASUSTeK that they put it in. You can do the math.

Dr. Farber, supported by actual live technical experts, brings you a correct statistical regression that ASUS does not challenge. And that follows the damages loss. Mr. Ferioli is doing the

10:01 work of a witness, Dr. Coleman, who's not here. He's
10:01 absent, hoping to convince y'all to give him the same
10:01 deal that Samsung got.
10:01 Let me ask you this: Did Samsung send
10:01 SVV down a rabbit hole? Did Samsung engage in delay
10:01 tactic after delay tactic? Did they pretend to not
10:01 know what components are in their products with their
10:01 logo on them? Did they act like they didn't know how
10:01 to contact their business patterns? Claim ignorance
10:01 for darn near everything? They didn't.
10:01 The decision is easy. The appropriate
10:01 reasonable royalty in this case is 58 million.
10:01 Just going to quickly walk through the
10:01 verdict form just to show you how that looks. You're
10:01 going to be asked to fill this form out on
10:02 infringement. You're going to click "yes" for direct
10:02 infringement. That's the one that there was a
10:02 stipulation regarding for their subsidiaries.
10:02 And we talked about induced infringement.
10:02 Same thing, going to click "yes."
10:02 Willfulness, we ask that you click "yes."
10:02 That's willful blindness, having no invalidity defense,
10:02 no noninfringing alternatives and so forth.
10:02 And then for damages, the final question,
10:02 accept Dr. Farber's model that is valuing the value to

ASUS, not Samsung, not MSI.

I'm going to sit down. My colleague Brad Caldwell will be up here later for a few more minutes. But as you're listening to ASUSTeK's lawyer, remember it's all about the money.

Thank you.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

MR. BURESH: Good morning, ladies and gentleman. Again, it's been a busy few days, and I concur with my colleague that you guys have taken great notes. You've stayed awake the entire time, which is, candidly, not always the case. So it's much appreciated. I know you guys are doing the best you can.

I also know that when you're trying to work and take care of families, this is not what you want to be doing. And I think we as attorneys can get kind of wrapped up in what we're doing and think you're, you know, just here for our entertainment sometimes. And I know that's not the case. You know, it's hard to do this, and your service is greatly appreciated.

I'm going to start out with just what I'm doing here. Have you ever had like a speech course in high school or college or whatever, the ones that are

so painful for everybody where you got to stand up and do this, but it's awkward because you're -- we're young at that point and it's scary in front of all your peers.

But the speech courses all tell you the same thing, right? When you're talking to people, you tell them what you're going to tell them, and then you tell them, and then you tell them what you've told them. You ever heard something like that before?

So opening statements was me telling you what I expected that we were going to tell you. And then through this case, we've kept our train right on the tracks, and I believe we have told you everything that I said we would. And now I'm going to just briefly repeat that. I'm going to tell you what we told you, just like a speech class. And that's the point of closing arguments.

But I want to be clear about something. I'm not here to make decisions. You are here to make decisions. And what I'm doing is simply offering you my perspective on what we've seen. But I don't want my perspective to try to trump you guys. You know, I'm giving you my perspective to be as helpful as I can be on behalf of my client, but it's your decision.

You have to find the truth, like we

talked about at the beginning. And that is the goal. When we step inside this bar, that's the goal.

And it's something that has -- it's been important to me. It's been beautiful to me since I was a little kid. My family, my mom and my dad, we were -- we were not wealthy. They were working folk. We lived, as I said, in South Central Kansas. There was -- we were near the county seat, you know, like the little towns where everybody comes together.

There was a courthouse at the county seat. And one of the things my dad and I used to do when I was little, you know, five, six years old, on Saturday mornings, we'd drive in and go to this donut shop that was in the little town. And in that donut shop, I -- there was always these two guys sitting in there drinking coffee on Saturday morning, and they happened to be two lawyers that were -- when I first met them, they were probably a little older than I am right now, so they were upper 50s, okay.

And with my dad and I, I'd go to this donut shop and I'd go in and we'd sit down. My dad knew them. We'd start to talk. And neither of them had grandkids, so I kind of became the surrogate grandkid for both of these lawyers. They were just little country lawyers. They handled all kinds of

things from, you know, whatever was going on with families to criminal cases to car accidents. They were just doing whatever.

And as I started to get older, they'd come watch me play baseball or whatever, that sort of thing, and when they had a case in that county courthouse, they would let me come over and watch them. And that was my exposure to doing this. And that is what I fell in love with. And those guys, both of them, Mr. Martin and Mr. Hill, they were just wise old guys.

And when I was -- remember when I was 12 years old, I was still going into the courtroom with these guys to watch, but this is the first time they got the judge's -- not this judge's, but the judge in my town, got his permission and let me sit with one of them at the table when I was 12.

And I didn't even have -- it was comical. I went in, I had a short-sleeved buttoned-down shirt, if y'all remember that, remember those. I don't know if you can even get them anymore. I had a clip-on tie. I had some cowboy boots that I wore, and I put on these slacks that were about like this. You know, I could walk through a pretty good flood, still been okay.

But I'm sitting at that table, and it

felt good. And I enjoyed it. I was learning what they were doing. It became a beautiful thing. They believed in pursuing the truth. And both those guys, they always told me the same thing: When you step inside this bar, that's what you're doing. From the time I was a little kid, that's what I was taught.

One case that I sat with Mr. Hill on, the other side kept talking about Mr. Hill throughout the whole case: Mr. Hill said this and Mr. Hill said that. And I leaned over because it was making me uncomfortable, and I said -- I said: Are they -- are you getting in trouble? Like I didn't really know what was going on.

And he looked at me and he said: No. When the other side's coming after you, it's because you're right in the bull's-eye. You're hitting the truth square on, and it hurts. That's why they're coming after you.

And my colleagues here have been talking about me. They've been talking about Ms. Marriott, even going back to voir dire and talking about Mr. Siegmund because we have been telling the truth, and the truth is painful to them. So they come after us. When you're hitting the bull's-eye of the truth, that's right where you want to be.

10:09 The patent case. What do you think may be the number one piece of evidence? It's not all the evidence, but the number one piece of evidence might be in a patent case? The patents. Right? I've been doing this about 25 years now. I have never seen a plaintiff run away from their own patents as much as I've seen in this case. Okay?

I mean, if we talk about something in the patents, our witnesses are getting just berated for looking at the context of the patents because they don't want you to look at the patents that Dr. Vasylyev wrote himself. Like, literally, just skip over the first 65 pages and look at these last two columns.

Ladies and gentleman, that's not how this works. You have been instructed from the Judge. You need to follow those instructions. The claims are compared to the products. That is correct. We've done that.

But the claims are understood in light of the whole novel. Plain and simple. And they've been running from that, and that tells you an awful lot about the case.

Could I have the ELMO, please? Thank you.

And this is really why it's important. I

10:11 asked Mr. Credelle about this. Because I do think it's important. And here's the thing that's going on. All right? His words.

Care must be taken lest word-by-word definition removed from the context of the patent would lead to an overall result that departs significantly from the patented invention.

And he agreed with that statement.

Okay? Because that's the truth. If you look at the claims word-by-word while ignoring the context, you can do whatever you want and say they mean whatever they want. Okay? And that would lead to a result that's not good.

So don't accept the invitation to ignore the very best evidence in this case, which is the patents. I promise you, if our witnesses were doing anything even slightly untoward, who do you think would have been objecting?

And we have a very good referee sitting up there on the bench. If we were doing something wrong, he would not have let us do it. Our case was right down the train tracks, ladies and gentleman. Right down the middle.

Let's think about some of the witnesses. As we've just walked through the case, I told you what

10:13 we were going to do. Did I follow through on it?

10:13 Dr. Vasylyev was their first witness.

10:13 And this is really where the running began. Okay?

10:13 Now, the instructions tell you a person

10:13 can make a mistake in their testimony, and you need to

10:13 judge whether that is meaningful or not because you're

10:13 the judges. Right?

10:13 Dr. Vasylyev is probably the most

10:13 educated person in this room by a significant margin.

10:13 Put simply, he's smart, very smart. Okay?

10:13 And Dr. Vasylyev wrote these patents.

10:13 Dr. Vasylyev along with ASUS has litigated this case

10:14 for over two years. In other words, the patents are

10:14 kind of his thing.

10:14 Now, when I asked him, does the '318

10:14 patent mention displays, y'all remember this whole

10:14 thing.

10:14 I think it may not.

10:14 And I said: Yes or no, do you know?

10:14 I don't know.

10:14 In other words, Dr. Vasylyev was telling

10:14 us he didn't know the contents of his own patents

10:14 because the content that I was pointing out was bad for

10:14 him. You need to judge those sort of things.

10:14 Here's another one, the quantum dots with

the colorful light show at the beginning. We were making the point the quantum dots that they showed you had nothing to do with his patents. That's just the point we were making because the quantum dots in his patents were doing what?

Taking our wonderful sunlight and converting it into electricity. It's a different type of quantum dots.

So I asked Dr. Vasylyev about this color notion. And we had an exchange. And he said -- I said: You don't recall whether your patent talks about changing the color of light or not?

I don't recall.

If you remember that testimony, I walked him through his patents, display, monitor, colors, those types of concepts. And we had to do word searches to establish to him that he had to agree with me before he would.

That type of demeanor in the witness chair. You know, Lady Justice weighing, balancing, test the credibility of that. Is a man with his intelligence, his access and knowledge of the patents, is it believable that he can't answer basic questions about what his patents talked about?

Credibility. It's an important thing.

10:15 Then I told you in my opening as well, I
10:16 did have what I think was described as an extended
10:16 discussion of wheat and chaff. I didn't feel like it
10:16 was that extended. Maybe it was too long for you all.
10:16 I don't know.
10:16 But the wheat and the chaff, like I want
10:16 to be here -- we want to be here talking about the
10:16 patents and our products and keeping the focus on the
10:16 train tracks so that it is as helpful to y'all as
10:16 possible. And I told you there was going to be a bunch
10:16 of chaff to try to cloud that up.
10:16 So Dr. Vasylyev was on the stand for a
10:16 long time talking about stuff I even said beforehand
10:16 was going to be irrelevant. And we even heard about it
10:16 more in closing, walking through it again.
10:16 This is a long piece of testimony, and
10:16 this is just to help you recall some of the things that
10:16 happened. But I literally went through the list with
10:17 him.
10:17 Grants, are they -- the grants you talked
10:17 about, do they have anything to do with the patents?
10:17 No, sir.
10:17 The public recognition that you talked
10:17 about, did those have anything to do with the patents?
10:17 No, sir.

10:17 The grants you've gotten from the Department of Energy and California Energy Commission, those sorts of things, none of them were used to develop any of the patents?

No, sir.

Okay. The things we're hearing about from them are literally an hour and a half of testimony that I suggest, from my perspective, (indicating) let the wind blow that away. It has nothing to do with this case.

Another thing I said in my opening was we're not going to see a monitor from Dr. Vasylyev because that's not the lane he's in. Like, they talked all about our monitors and how great they worked and left me with the impression that they were talking about the benefits of the patented invention.

And you remember I asked Dr. Credelle, that's a big if, right? There's a big assumption built into that whole line, which is that our products actually use your technology. Then you could use them as an example. But that's what y'all are here to decide.

So putting the cart before the horse with that assumption doesn't really make sense. What I was inviting was show us a prototype. Show us a monitor.

10:18 If you want to claim that your backlight creates all
10:18 these great, great things, show me.
10:18 Remember the "Show-Me" state? Show me.
10:18 So I made that invitation in opening, and I was
10:18 confident it wouldn't happen.
10:18 But here's what we got from Dr. Vasylyev.
10:18 I asked him point-blank: You can't say
10:19 with any certainty based on real-world prototypes or
10:19 testing that your product even works the way you
10:19 described it, can you?
10:19 And his answer was: I'm pretty sure that
10:19 it will.
10:19 Those are words from a very interested
10:19 person. Where's the evidence? Show me something. We
10:19 have no sense in this room today that his actual
10:19 inventions would provide any benefit or even work in
10:19 the context of a display. You've not seen anything to
10:19 suggest that.
10:19 Now, Mr. Credelle was their expert, and
10:19 he is a testifying expert. No critique; it's a job.
10:20 But it's worth weighing. And it's something to
10:20 consider. If a person makes their living off of
10:20 getting in that box and being hired by lawyers and they
10:20 need that living because that's their only source of
10:20 income, it kind of changes the dynamic of how you weigh

that. Just from the perspective of human interest.

Here's the thing. You got to test the testimony, test what the content of his -- of his presentation was.

One of the things that caught my attention is he was arguing left and right that a light guide, that he's called a light guide for as long as could be, that the industry has called a light guide since 1997 or '95 or whenever it was, it's been a light guide the whole time, but suddenly Mr. Credelle sits down in this case and it's a light trap.

Even though in his testimony he's calling it a light guide, when I come up to cross him, well, now it's a light trap.

I don't know what you all want to do with that. You know, it's up to you how you want to weigh that.

From my perspective, when somebody is willing to stretch their professional knowledge, stretch what they would call something in their profession in order to support a case they've been hired for, that tells you something about where they're coming from.

But it comes down to opinions. The case has always been about, number one piece of evidence,

10:21 patents, number two piece of evidence, products.
10:21 Right? It's pretty simple really. Do the claims match
10:21 up? After we understand them, do the claims match up?
10:22 The '318 patent, we've looked at this a
10:22 few times now. You saw me do this with him -- with
10:22 Mr. Credelle on cross. You saw it again with
10:22 Dr. Goossen.
10:22 But here's the deal. Even Mr. Credelle
10:22 knows that that LED is what is injecting light into
10:22 this system. I mean, it's plain as day. Just look at
10:22 the thing, how it works. It's light coming in here and
10:22 then going out the top because the display is up here.
10:22 Really is straightforward.
10:22 Now, I'm going to do some word voodoo
10:22 here, okay? An input surface, that's the surface where
10:22 the light is put in. Okay? Input, plain and ordinary
10:23 meaning, it's put in. Where is the light put into this
10:23 system? Right here.
10:23 What is Mr. Credelle calling the input
10:23 surface? Down here, where the light actually goes out.
10:23 Okay? And his point is, well, some of it comes back
10:23 in.
10:23 But this patent, there are not multiple
10:23 different input surfaces. It doesn't even make sense
10:23 in the context of this claim.

10:23 There's one input surface in this claim. It comes in the edge, and it goes out the top. Why does that mean there's no infringement? Because this patent was never about edge-lit displays. You look at this, and you need a broad-area input surface that opposes the broad-area output surface and is parallel to it.

10:24 That's for a solar panel where the light comes in the top and out the bottom into a harvesting layer. That's what it's talking about. It is not talking about light coming in the side and going out the top.

10:24 And just so I can orient y'all to your patents, when you go back, these are what you're going to have in the jury room. When you're looking for the claim limitations we're talking about, they are at the back. And the particular one we're talking about is in Claim 1, and it's that first limitation. Okay?

10:24 Now, Claim 3 is also asserted in this case, and I don't want there to be any confusion. It's what's called a "dependent claim." It refers to Claim 1. So if Claim 1 is not met, Claim 3 can't be either. There's nothing separate to look at on Claim 3.

10:25 Make sense?

10:25 Now we have next the '089 patent. This is another of the light-trapping patents.

10:25 And we talked about the array of optical elements which everyone agrees we should be looking at these lenses on top of the light guide to consider whether this meets the right geometry, is it set up right? Okay?

10:25 Contextually, again, we're talking about a light-trapping system where the light comes in from the top, goes through the bottom. But in our products, again, it's edge-lit. And that creates a problem.

10:26 These lenses, okay, you tracking me? They need to be configured for injecting light into a space. And that's what they do in this patent. Remember the images? Light comes down, hits the lenses and gets focused into the layer beneath. It gets injected into the space beneath.

10:26 In this product, what is injecting backlight into the space? The space Dr. Credelle defines is from here all the way up to here.

10:26 And I ask you a simple question: What is configured to inject light into this space? Okay?

10:27 The light is injected into the space before it ever even touches a lens. And it's going through the lenses backwards. It's not being injected

into anything. Those lenses spread the light out like this. Okay?

The configuration, the geometry that Dr. Goossen talks about is completely backwards in this patent. And you would expect it to be because this patent is talking about a completely different system.

When you look at the '089 patent in your notebooks, I want to show you where these claims and limitations are.

So in the '089 patent, again, you flip to the back. We're talking about Claim 14. The relevant limitation is right here with the lenses configured for injecting. And 19 is the dependent claim. Again, same thing. There's nothing separate to look at on Claim 19.

The '342 patent. Now we're into the patents that actually do emit light. And the question you need to ask is: Are the products emitting light in the same way that the design of the patent calls for? Okay? Are they collimating? Collimating is not in the claim. It is the why. Why would our products not want to do what's in these claims? Okay? Because we don't want beams of light coming out.

Here's the claim limitation that matters. Predetermined alignment between the lenses and the

surface light-deflecting elements. Okay?

There are over a million deflecting elements on these light guides. And they are randomly distributed. Okay? When this is set up, they are spread intentionally random. You've heard witness -- even Mr. Credelle says that. They are a random distribution.

The lenses, which you can see here horizontally, they're just laid out linearly, like parallel one after another. It is not possible to have linear lenses that are in some predetermined alignment with things that are random underneath them. That's not possible.

And why is it done this way in our products? When you set random distributions for those surface relief features, you are getting the light to distribute in random patterns coming out so that you have full dispersion.

If you align the surface relief features with these lenses, it creates focal points and you get beams coming out. We don't want that in our products, so we design to randomness. Okay? That's just the facts. That's the truth.

And what Mr. Credelle has pointed to, the two microcavities that he points to that are in

alignment, that's not by design. That's what happens when you have something random. Some of them will be aligned because it happens that way, and a whole bunch of them, like on the order of millions, will not be. Okay?

"Predetermined" means by design. These are not aligned. Let me put it this way: They are intentionally not aligned by design.

For the '342 patent, when you look in your notebooks, this is a massively long claim. Okay? This is -- you need to kind of look where I'm highlighting here so you can actually find the language when you're looking for it. But it's at around Line 61, there needs to be a predetermined alignment right there. Okay? That's what you're looking for. And from my perspective, it's plain as day that that is not present in our products.

The dependent claim on this one is 21 over on the next page, right here. Same deal. Nothing new to look at on that one.

And last one, the '562 patent. This is really the same deal as we just talked about. This particular claim talks about it in terms of a predetermined two-dimensional pattern. That's talking about these microcavities or what the claim calls

"surface relief features." Okay?

Mr. Credelle, Dr. Goossen, they agree these are spread in a random pattern. You will not be able to repeat these if you get a copy of or picture of one of these. And like Dr. Goossen was saying, put your hand over half of it and try to repeat whatever you're seeing on the left-hand side, you're not going to be able to do it because they're random. They're random by design.

Now, there was a whole bunch of discussion about whether random is a two-dimensional pattern or not. I don't even know really what to say about that. You either are random or you're in a pattern that you've defined by two dimensions. I don't know how you square with those two.

That's why we believe there's no infringement. Plain and simple.

Last thing before I leave Credelle and the patents, just to give me a second to complete my circuit here. The '562 patent in your notebooks, so that you can find the limitations we're talking about. Okay?

Here, we have Claim 1 of the '562 patent again at the tail end. The relevant language is around Line 45 highlighted on the screen in front of you.

10:34 Predetermined two-dimensional pattern.

10:34 And Dependent Claim 7, same issue as all the rest. Nothing new to see there.

10:34 Before I leave Mr. Credelle, in terms of keeping the train going down the track, tell you what we're going to do, tell you what I told you. That's moving in the right direction. What you see sometimes in cases is when things start to fall apart, you see parties going off the tracks. Okay? They're just kind of careening at this point.

10:34 And what we've seen in this case during the direct examination of Mr. Credelle, he put the pictures up that I've been looking at with you. That was his opinions. I cross-examined him, and I'll let you decide how that went. That's up to you guys. But what we saw on redirect then is Mr. Credelle come back and start talking about new things, okay?

10:35 We're not talking about the pictures anymore. Now we're talking about CAD files, whatever those are, some programs, spec sheets, some machine that does indexing, all new on redirect, by the way. And the question I have is: Where's the evidence of any of that? Right? Did we see it? The train's coming off the tracks.

10:35 Now, after Mr. Credelle comes down and

10:35 Dr. Goossen comes up in our case, it goes even further
10:35 off the track. Suddenly we're seeing new pictures and
10:36 some, you know, things being pulled together that we
10:36 didn't see with Mr. Credelle's direct examination. We
10:36 didn't see it on redirect.
10:36 Now the plaintiffs are trying to put some
10:36 new stuff for arguments in through our expert that we'd
10:36 never even seen before. Didn't know where they came
10:36 from.
10:36 That's the train careening, in my
10:36 opinion. And I'd like for you to consider that as
10:36 well, the flow of how things were presented, okay,
10:36 because that can be informative as well.
10:36 Continuing down the string of witnesses.
10:36 Mr. Farber -- or Dr. Farber, excuse me -- came up next
10:36 and he was presenting the plaintiff's damages case.
10:36 What did I tell you in my opening? He's going to talk
10:36 about regressions. It's going to be kind of black
10:37 boxy, hard to see into.
10:37 I told you that regressions were fine in
10:37 my opening. I don't have any problem with mathematics,
10:37 it's great. Whatever. But what I said was garbage in
10:37 and garbage out. Okay? Because if you put in the
10:37 wrong inputs to the math, you get the wrong outputs.
10:37 And I did make the comment because I think it's

applicable with political polls.

If someone's paying for a particular result, you can use the math to get that result. Okay? And I think that's what we're seeing here. I told you that, and I think we've shown it.

Here's the -- what I think high level -- this is an example, not a conclusion. But Dr. Farber was asked: That plastic stand could be attributed to the patented technology. We haven't heard anything like that, have we?

Well, we did hear that the benefits could extend to the plastic stand.

Okay. Let me back up and give you a little context.

The questions we're asking is why did you start from the whole dadgum monitor? Like the buttons and the circuit boards and the LEDs and the -- and the -- the liquid crystal display and the stand? The plastic that it sits on? Why did you start from all that and then use your regression to narrow it down from there?

Plain and simple, if you have a bigger starting point, then your regression ends you at a bigger place. What in the world do these patents have to do with the plastic stand that a monitor sits on?

10:38 Nothing. It's garbage in and it's garbage out. You can have all the Nobel Peace Prizes you want for the mathematics. If you start at the wrong place, you end at the wrong place.

And I suggest just look at the number he came up with. $58 million? On what planet? For the case we've seen -- even if they were right, even if you agree with them, for the case we've seen, on what planet does that get you $58 million? Because on this planet in the world we actually live in, the best evidence is what actually happened.

You don't have to have a black box. You don't have to have a magic eight ball to get here. You look at what a company that was much larger with many more products paid, and you work down from there to get to where we should be.

Am I telling you that $425,000 is some precise, like that's it? I think it's a reasonable place. I think Mr. Ferioli's analysis on that was well supported. But if you have to find damages, it's up to you. But start from the real world. Don't start from some garbage-in-garbage-out regression analysis.

Now we turn to our case. Okay? Our first witness was James Lee. And I'll just give you my perspective. It was challenging to listen to with all

10:40 the interpretation stuff going on. That's challenging.
10:40 It's hard. It's part of the thing, right? I mean, if
10:40 you sue a company in Taiwan, that's what you're going
10:40 to get.
10:40 But my perception is he answered the
10:40 questions to the best of his ability whether they were
10:40 good for him or whether they weren't.
10:40 THE COURT: Counsel, you have five
10:40 minutes left.
10:40 MR. BURESH: Thank you.
10:40 What's that tell you? He's just honest.
10:40 Okay? Just honest. One of the big things with him is
10:41 where are the engineers? Why didn't ASUS bring an
10:41 engineer?
10:41 Well, I think it's no surprise by now
10:41 that ASUS doesn't design the monitors. There are not
10:41 engineers at ASUS who have firsthand knowledge of this.
10:41 That's it. It's no secret.
10:41 We brought Mr. Lee because he's the
10:41 leader of that division. And in the Taiwanese culture,
10:41 that matters. He comes to answer for it. Okay? Just
10:41 the way it works. That's why he's here.
10:41 The letters between Jason Wu and
10:41 Mr. -- the lawyer for SVV, read them. We fully stand
10:41 behind those letters. They show a company doing what a

company was supposed to do. They engaged. They communicated. And the delay they keep talking about, nine months of it was us waiting for them. Okay? The vast majority of that delay was SVV.

When the complaint in this case was filed, Mr. Lee told you what happened. They went into action. Mr. Lee sent the legal team, engineers at both ASUS and the display companies, they came together, they did an investigation. That's exactly what's supposed to happen. They concluded there was no infringement. And that's fine. That's their opinion.

That's what we presented to you here today. You get to decide whether that's right or not right. But that's what they did. And there's nothing wrong with that. That's just what a company is supposed to do.

In these instructions, this is on willful infringement. This was not included in the plaintiff's opening, but I want you to read this sentence: You may find that an infringer willfully infringed if you find that an infringer's behavior was malicious, wanton, deliberate, consciously wrongful, flagrant, or in bad faith.

Those are words that would raise our dander here in the U.S. In Taiwan and Asia, where

10:43 they're an honor society, they're highly offensive. And I do not believe anything we've seen in this case justifies those types of allegations to even be in this case.

Dr. Goossen, I'm not going to go through the claim analysis again. I've already done that.

But here's what I want to leave you with: I believe that Dr. Goossen was the first witness in this entire case with technical expertise to step on that stand and try to communicate with you clearly, like by intention to communicate clearly and simply without a bunch of clouds just to give you by the best of his ability the straight shot. That's my perception of Dr. Goossen.

And this wasn't me. I didn't prepare him for this. I didn't know this was coming on cross-examination, but I think it's very telling.

My colleagues on the other side asked Dr. Goossen: What side are you on?

And his answer was: The side of truth.

That's what he was doing. That's what we've been doing this whole time. We've been right in the bull's-eye of the truth.

It's your decision whether you agree with us or don't. But here's the deal: Fundamentally,

you're asking do you think we were in the bull's-eye of truth, or do you think the plaintiffs in the way they've presented their case, that they were in the pursuit of truth?

If you agree with us, those little checkmarks with all the yeses that you saw from the plaintiffs, you just go to the other side. It's nos right down. And I believe, ladies and gentleman, that that will be a reflection of the truth that it is our duty to find here today.

Thank you.

CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

MR. CALDWELL: Thank you, ladies and gentleman. We're almost there. This is the last time you have to actually listen to a lawyer in this case.

I have to say I like Mr. Buresh's demeanor. I like the way that he talks. It kind of lulls you into, I don't know, like you're feeling like you're in some sort of a story, and it's in some respects compelling.

But, you know, something that we heard from the very beginning of this case is that the lawyer arguments, which includes what I'm telling you, is not evidence. The lawyer argument that you heard from my colleague's not evidence. And the lawyer argument you

10:47 heard from Mr. Buresh is not evidence.

10:47 And one thing is pretty interesting about watching this group that stood out to me -- because, I mean, you know, the lawyers sit over here and we're curious and like to see what jurors are doing -- is you're a very interesting group that took fewer notes when the lawyers were opening, really started paying attention when the evidence was on the stand -- the witnesses were on the stand presenting things to you.

10:48 And that's what this is about. And I just want to make sure that people aren't lulled into some distraction that takes you away from the evidence you saw in this case.

10:48 You know, I could come up and say this is the strongest infringement case I've ever seen, and I've done it 25 years. It's the strongest willfulness case I've ever seen, and I've done it 25 years. But it doesn't matter what I tell you as far as that goes.

10:48 You're the one who has to answer the question of whether you believe that the only person who took that stand and gave you straight answers was Mr. Goossen.

10:48 Now, Dr. Vasylyev, within the span of a minute, was criticized for how smart he is, criticized for how smart he is because he put so much information

10:48 in his patent, and then criticized for not being
10:49 willing to say, I know a certain word appears in one
10:49 specification or another. They're like 50 and 60
10:49 columns long in some respects, and he's being careful,
10:49 when he said he doesn't know. And that sort of
10:49 criticism happened over and over and over.
10:49 And then when the attacks turned to, you
10:49 know what, let's talk about the claims, guys, I started
10:49 on Monday saying this is going to come down to the
10:49 claims. I showed you we were going to go through the
10:49 checkmarks, which I did. And then we spent much of
10:49 this trial trying to remind you guys this is going to
10:49 be about the claims.
10:49 Now, who was constantly talking about
10:49 solar? Who was constantly talking about, well, if you
10:49 trap, you can't display something? If you collimate,
10:49 it won't work. If you harvest, this won't work. Who
10:50 was constantly doing that?
10:50 And I'm asking for a reason. This is a
10:50 claim. This is a claim for the '318 patent. I would
10:50 like to point out to you the words "an optical cover
10:50 for a light harvesting device." That's in one of our
10:50 claims. And I'm guilty as everyone here for saying we
10:50 got to focus on the claims.
10:50 You notice there's not a red check by it,

though. That's because this is called the "preamble" of a claim. And the law is that the preamble of a claim is not limiting.

And not only that, in your instructions there's a chart with definitions that Judge Albright has given you. And you know what it says specifically about this? It specifically says: The preamble of the '318 is not a limitation. It literally says that in the chart that's in here, that's in your papers.

The '089 has something similar. And the same chart says it's not a limitation. That's what Judge Albright says. This isn't Mr. Buresh. It's not Mr. Caldwell. It's not Mr. McCarty. It's none of us. It's Judge Albright. It's not a limitation.

Also not a limitation is the preamble of the '562. But just for contrast from -- in case there's any doubt whatsoever that no one would ever think these relate to these displays, it's absurd. I mean, we actually have that preamble, edge-lit waveguide illumination system, where all you hear is about solar and capture and trapping and all that.

This is the claim that the United States Patent Office issued after examining the specification. Now, I'm not saying that's a limitation. What I'm pointing out is the just distraction and the effort to

have you look at something that's different.

It's incredibly hard to hear 45 minutes of a lawyer arguing something that I don't know what he's going to say and to respond to each point. But I'm going to try to respond to a few of them just to illustrate some points.

But before I do, I would like to ask y'all to focus on something that is in the charge we're given.

Now, there's a slide that my colleague showed up, and he highlighted several bits of instruction. But it's Juror Instruction No. 20, 2-0. And I think a lot of cases, it's not maybe really in dispute. But in this case, it's the one that tells you the thing that matters is the claim.

I keep going back to that because this is something, you know, my mom has asked me about when she's like looking at something, I'm trying to describe a patent to her, and I'm showing her the pictures. And she's looking at a picture. And it's like, but that doesn't look like an iPhone, you know, something like that.

And the reason is because -- so I've tried some cases against Apple that related to the iPhone, for example. And sometimes you'll have a

10:53 patent, and it's about like a software invention, like
10:53 encryption, or it's something about how the memory
10:53 works, for example. And really at the end of the day,
10:53 it can be in the phone, but the thing you're looking at
10:53 might be different.
10:53 And in this case, to the person of skill
10:53 in the art who's the target for these patents, as we've
10:53 all heard, the disclosure is of all the scientific
10:53 principles that matter. And we're not running from the
10:54 concepts of light trapping. The idea is you are told
10:54 that's how you hold it in a waveguide. It's this total
10:54 internal reflection where it stays inside the waveguide
10:54 until at the places where you've picked, the deflector
10:54 points, it can deflect out.
10:54 Light can deflect up where you want it,
10:54 and light can deflect down off of the reflector sheet
10:54 and then back up through. It can also be recycled,
10:54 and, therefore, you get more light through the
10:54 photoreactive layers, through the quantum dots.
10:54 Every bit of this is internally
10:54 consistent, and the scientific disclosure is there.
10:54 Because you guys heard during this trial, there are
10:54 concepts like written description, where someone could
10:54 challenge invalidity if there was a problem with the
10:54 description, like if it was inadequate to support the

10:54 claims as they're being read. It's also something the
10:54 examiner looks at when the patents were initially
10:54 examined.
10:54 So while I think we just got drug through
10:55 the mud saying we were distracting you by giving you,
10:55 what, six minutes of Dr. Vasylyev's background and
10:55 awards, we got drug through the mud that we were
10:55 distracting you. And who has spent the better part of
10:55 three days talking about this would only work if you're
10:55 putting solar cells in here?
10:55 So I don't want you guys to forget what
10:55 the evidence actually was just because someone says,
10:55 hey, the only person that was credible was our guy.
10:55 That's not true.
10:55 Now, there was criticism. Mr. Credelle,
10:55 he's testified. Sure. He's testified a few times.
10:55 He's semiretired and he picks cases he believes in and
10:55 is willing to help through his technical expertise. I
10:55 hardly feel like that was some indictment on
10:55 Mr. Credelle.
10:55 Now, they effectively tried to call him a
10:55 liar, saying he couldn't have taken these images that
10:55 he showed you. But he got up and walked around in
10:56 front of you. And even in this lighting in the
10:56 courtroom, zoomed in and showed you how he looked at

these panels, all things that the other side hasn't done.

The other side, the one that apparently can't find their own monitors and apparently couldn't tear them down until they were in here, and, finally, for the first time ever opened one of their own monitors to say, you're asking for too much money. We've got a circuit board. Three and a half years, they can't tear down one of their own monitors?

In closing just now, the very end, within the span of about 30 seconds, you heard: It's crazy that they keep criticizing us for not bringing an engineer. Not bringing an engineer, we don't have engineers that do this. We outsource it. Why would they criticize us of that? This guy's the head. We don't have engineers.

Within 30 seconds, he was telling you, by the way, the guy who came here told you he's talked with his engineers back at ASUS, and they tell him we're okay. We're not infringing.

Which is it? Which is it?

We have done everything we can. Dr. Vasylyev has done everything he can. And if you want us to talk about what cases look like, an inventor who comes out of his pocket and buys literally dozens

10:57 of their products to crack them open and map them and
10:57 send it to them, and the minute they know that's
10:57 coming, they just say, go talk to somebody else.
10:57 In here, oh, yeah. We didn't have
10:57 engineers until they told us something good.
10:57 Now, you've heard a lot about the
10:57 so-called light-trapping patent. Okay? And I hope
10:57 that by now, you understand that if you follow the
10:57 Judge's instructions, that's been nonsense from the Day
10:57 1 -- from Day 1.
10:57 But let's be clear. Their so-called
10:57 light-trapping patents constitutes roughly 1 percent of
10:58 the damages in this case. Roughly 1 percent. That's
10:58 the '318 and the '089 is roughly 1 percent, because
10:58 those are the ones that require things like reflecting
10:58 back through to go to the quantum dots where they
10:58 specifically say the quantum dot layer.
10:58 Roughly 99 percent of this case is on the
10:58 '342 and the '562 patents.
10:58 Now, I would like to point out because I
10:58 think this keeps getting glossed over. They say you
10:58 can't have predetermined and random. This claim
10:58 doesn't have random, by the way. But the one that does
10:58 actually says that the dots, the surface cavities are
10:58 randomized. It doesn't say they're checkers thrown on

10:59 a checkerboard.

10:59 Has anybody ever seen this effect? I was
10:59 trying to decide how to describe this. Let's say my
10:59 daughter's got this little pin-striped dress on or
10:59 something. Have you ever seen where somebody has
10:59 something like striped and on the other side like a
10:59 screen door or something? And you kind of -- you move
10:59 your perspective or whatever, and you kind of see wavy
10:59 lines through the screen door? I don't know if you've
10:59 ever seen that effect. It's called like a moiré
10:59 effect.

10:59 The idea is if you put stuff that's in
10:59 perfect lines and you look at it from different angles,
10:59 you start to see weird curve effects and things like
10:59 that. That's what is going on with randomized. What
10:59 they're saying is make the spacing a little irregular.

10:59 Now, the other claim, the '342 does
10:59 require randomized. They make the spacing a little
10:59 irregular underneath the lenses. That's it. That's
10:59 what's going on. And then when you see that it's
10:59 predetermined, guys, you keep -- well, they can't be
10:59 predetermined. It's random.

10:59 These guys act like they're throwing dots
10:59 on a panel each time they make one. But that's not
11:00 true.

11:00 This is the demonstration that you saw yesterday that they actually move them to be outside of that moiré effect. They're slightly randomized so that you don't get this weird effect. And then they lock in the location of the microstructures. They lock in the location of the lenses. And when it has even light distributions like you saw with the LED display, they reproduce that over and over and over.

11:00 And what you're evaluating for infringement is the monitor that comes in on the boat. Lands on these shores as the act of importation, sale, offer for sale. Okay? You have to look at that monitor.

11:00 Was the arrangement of the microstructures and the lenses predetermined? 100 percent. Absolutely. It is a design. That's why if you look at them over and over and over, they will always overlap because it is predetermined.

11:01 So this idea of somebody throwing checkers, it's truly -- it's truly absurd and disingenuous to the field of optics that we're talking about here. That's why they keep kind of showing you like mental, visual images of things like checkers. It's crazy.

11:01 Like I said, I can't go through

11:01 absolutely everything that he said, and I'm unfortunately already finding myself just about out of time. But I'd like to start -- hit with damages real quick.

Look, we tried to do the thing we could to find the damage to ASUS. That's why we did a regression analysis. You know, stand up here and criticize that we started with the monitor, not with the panel. I agree with you, plastic stand probably doesn't change. And I think Dr. Farber would agree with you that probably doesn't change.

But what he was asked was is it possible it might? And it might because when you have to use significantly more LED material, as you heard, it's a lot more power, gives off a lot more heat, then there's more metal for heat syncing. The bezel changes. It's a lot of things. And that may sound crazy, but it's literally not crazy. You get significantly more heat and power consumption with more LEDs.

But even beside that -- well, first of all, I don't want to step away from that.

First of all, the regression analysis, that's the point. Like, you put in all of the data so that the regression formula can isolate out what differences there were as the results of the ones that

11:02 do or don't have the infringing panel. That is exactly
11:02 what the regression analysis does. That's why you can
11:02 start with the whole monitor.
11:02 Second of all, what they did to try to
11:03 say that was absurd is say they have a panel that's
11:03 $14. They bought a report saying a light panel's
11:03 70 bucks and another report saying backlight might be
11:03 20 percent of that. So some random, no-name panel
11:03 you've literally heard nothing about might cost
11:03 70 bucks, and the backlight of that one might be
11:03 20 percent. And so therefore, they get to write down
11:03 $14 and say: Aha, you're asking for too much if we
11:03 only look at the backlight panel.
11:03 That's what happened for them to show you
11:03 $14 and to say that this damages us.
11:03 They didn't talk about the extremely
11:03 high-end monitors they are selling. They didn't talk
11:03 about the cost of the panels that they put in their
11:03 high-end monitor. And the one that was listed on the
11:03 website at a thousand dollars, they didn't talk about
11:03 that. They didn't let their experts have that
11:03 information, and they darn sure didn't give it to us.
11:04 THE COURT: Counsel, you need to wrap up,
11:04 please.
11:04 MR. CALDWELL: Thank you, Your Honor.

11:04 I'll leave you with this. Thank you, guys, for paying so much attention. I just want to observe that with what you've seen in the correspondence and how long this has taken, at the end of the day, there are going to be some phone calls made. And Dr. Vasylyev is going to call back and talk to his wife, and ASUS employees that are here are going to call back and talk to their bosses.

And I want to know how that call's going to go. Are they going to say that by literally never looking at our product, never investigating, never producing our panels, the cost of them, the cost of our backlights, our contact information for all of our suppliers and then making them sue us before we would even look at our own stuff, it worked.

Thank you.

THE COURT: Thank you, sir.

Ladies and gentleman, let me wrap up with the final portion of my charge.

You've heard the closing arguments of the parties. And now it is your duty to deliberate and to consult with one another in an effort to reach a verdict. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors.

11:05 During your deliberations, do not hesitate to reexamine your own opinions and change your minds if you are convinced that you were wrong. But do not ever give up on your own honest beliefs because other jurors think different or just to finish the case.

11:05 At all times, you are the judges of the facts.

11:05 You've been allowed to take notes during the trial. Any notes that you took during the trial are aids to your memory. If your memory differs from your notes, rely on your memory and not your notes because they are not evidence. If you did not take notes, rely on your independent recollection of the evidence.

11:06 Do not be unduly influenced by the notes of others. Notes are not entitled to greater weight than your recollection or impression because each one of you is a judge about the testimony.

11:06 When you go to the jury room to deliberate, take a copy of the charge. Again, the exhibits will be shown to you on a monitor in the jury room -- and your notes.

11:06 I'm going to go a little off script for a second here just because it's easier.

11:06 First thing you need to do is select a jury foreperson.

11:06 Once you've selected the jury foreperson, that person -- there are blank notepads back there -- that person needs to say: I'm the jury foreperson, date it, and sign it. And this is the most important thing. You need to hand it to William or we won't know that you've done it.

11:06 Occasionally people do that and don't tell us. So hand the note to William or whoever's sitting outside, and then you can begin your deliberations.

11:07 I prefer someone whose handwriting is legible, but I don't have any control over who you all pick as your foreperson.

11:07 Now, continuing with what's in the charge.

11:07 Your verdict must be unanimous. After you've reached a unanimous verdict, your jury foreperson must fill out the answers to the written questions in the verdict form and sign and date it. Answer each question in the verdict form from the facts as you find them. Do not decide who you think should win and answer the questions to try and reach any result.

11:07 After you've concluded your service and I've discharged you -- I'll give you more instruction about that after you come back.

11:07 If you need to communicate with me during your deliberations, the jury foreperson should write the inquiry and give it to the court security officer. I will consult with the attorneys and respond to you in writing. Very unlikely I will come back and meet you.

11:07 Let me go off script a little bit here, though, too, because this has happened once or twice.

11:08 You should never indicate to us in the note any numerical division that you are at that point. One of us feels this way or two of us are -- we do not want to know what your verdict is until we get the verdict that is unanimous. So nothing that you write in your notes should ever reveal where -- any split that you might have at that particular moment.

11:08 And then I'm going to summarize the final page which is that basically you will not be allowed to communicate really with anyone while you are deliberating. Occasionally we have someone who needs to contact their spouse or someone about driving or something like that. If that comes up, let me know and we'll deal with it.

11:08 But essentially for the remainder of the

11:08 day and however long it takes while you're
11:08 deliberating, because that's entirely up to you, you
11:08 should not be communicating with anyone and you should
11:08 not be doing any kind of research or anything like that
11:08 on your phone.
11:09 Now, if any of you are smokers,
11:09 while -- if you need to take a break, please try and
11:09 make it as brief as possible. And while anyone is not
11:09 in the room for any reason, the others should not be
11:09 deliberating without the person. You should wait for
11:09 that person to return because we don't want anyone to
11:09 miss out on any of the discussions that are taking
11:09 place.
11:09 So I have a -- just letting you know, I
11:09 have a small scheduling conflict.
11:09 I have -- I had agreed to give a speech
11:09 or a talk or something at Baylor, so I will be gone
11:09 from about 12:15 to about 1:30 or 1:45. I won't be
11:09 available during that time. If you have a note, I
11:09 won't be able to respond to it. I'm just letting you
11:09 know in advance about that. I'm not ignoring you. I'm
11:09 just -- I'll be on the Baylor campus for that period of
11:09 time.
11:09 So with all of that, you are dismissed.
11:10 Jen's going to come back and show you how to work the

exhibit thing. But before you do that, if you all would select your jury foreperson and get that taken care of, that's important. Let William know who that is and then we'll move on from there.

THE BAILIFF: All rise.

(Jury exited the courtroom.)

THE COURT: Thank you. You may be seated.

So in terms of your -- where you need to be --

Could someone put that down real quick?

In terms of where you all need to be, I would ask everyone who's a lawyer to remain in the courtroom until we find out what the note is -- who the foreperson is.

Once we have the note from the foreperson --

And did we -- Kristie, do you know if we got lunch for them? I hope so. Okay.

So once we have the note from the foreperson, then after that, I care only that one lawyer per side be available either in the courtroom, on the floor -- or on the floor so if I have another note, I can tell you what it is the note is and how I'm going to respond.

11:11 As you heard me tell the jury, I'll be gone from about 12:15 till -- the thing goes from 12:30 to 1:30. I'll be back as quickly as I can after that.

11:11 And so I think that's all that we have.

11:11 Is there anything that -- I tell you that because while I'm gone, you all don't need to be here. You can go have lunch or do whatever you want because I'll be unavailable.

11:11 Is there anything we need to take up?

11:11 MR. CALDWELL: Nothing from the plaintiff.

11:11 MR. BURESH: No, Your Honor.

11:11 THE COURT: Okay. Thank you.

11:12 THE BAILIFF: All rise.

11:12 (Recess taken.)

11:17 THE COURT: Okay. If we could go back on the record.

11:17 The jury forewoman is Alison Rodriguez, Juror No. 1.

01:12 (Recess taken.)

01:30 THE COURT: I've written: The physical part was not admitted into evidence. You have access to all of the evidence that was. So no. You cannot have the physical part.

01:31 The note was: Is it possible for us to

01:31 physically have the parts from the monitor we saw in court? The light guide plate?

01:31 (Recess taken.)

04:13 THE COURT: Okay. On Page 33 of the instructions, do all three things need to be met? When considering active inducement, does it begin at first manufacture of products or notification of alleged infringement?

04:13 I'll tell you what I'm going to tell them and then I'll read it to you.

04:14 Okay. To that question I've written: Ladies and gentleman, you have the Court's instructions which you must follow. Please continue to deliberate.

04:15 (Recess taken.)

06:19 THE COURT: Please remain standing for the jury.

06:19 (Jury entered the courtroom.)

06:20 THE COURT: You may be seated.

06:20 Ms. Rodriguez, my understanding is you're the foreperson?

06:20 THE FOREPERSON: Yes, sir.

06:20 THE COURT: And you have a verdict?

06:20 THE FOREPERSON: Yes, sir.

06:20 THE COURT: Would you hand it to the bailiff?

Thank you, sir.

For the record, I've received Juror Note No. 4, which says: We have a unanimous verdict.

Ladies and gentleman, I would ask you to listen carefully to -- as I read this because as I told you earlier, I'm going to ask each of you to stand up and -- to reflect that it's your verdict as well.

I'm going to go to Jury Question No. 1.

With regard to the 2 -- I'm sorry -- '342 patent, Claim 1, yes, Claim 21, yes.

With regard to the '562 patent, Claim 1, yes, Claim 7, yes.

With regard to the '318 patent, yes.

With regard to the '089 patent, yes.

With regard to Question No. 2, the '342 patent, Claim 1, yes, Claim 21, yes.

With regard to the '562 patent, answer to Claim 1 is yes. Claim 7 is yes.

With regard to the '318 patent, yes.

The '089 patent, yes.

With regard to the Question No. 3: Did SVV prove by a preponderance of the evidence that ASUSTeK willfully infringed any of the asserted claims, the answer is yes.

With regard to the Question No. 4, the

amount of damages -- and I'll read this carefully and again so the jury will confirm it.

The amount is $22,434,055.

I'll say that again: $22,434,055.

Did I read that correctly?

Okay. Would everyone on the jury who agreed with the verdict as I just read it please stand at this time?

Thank you. You may be seated.

Ladies and gentleman, a couple things. Let me first thank you for your service -- let me sign this just to get that out of the way.

Let me thank you for your service not only on behalf of the Court but on behalf of the lawyers and their clients. After six years, I have to tell you that I'm always amazed at how hard the juries, you all work. And I told you I think at the beginning of the trial I hoped at the end of trial, at the end of the week, you would find this had been a rewarding experience. I hope that's true.

You could tell the amount of time and money and treasure and hard work that the lawyers put on behalf of their clients, how important this matter was to them and their clients. And the way our system works, it's the only one in the world where we ask

seven people to come in and take a week of their lives or more to render justice, because you all are impartial and you heard all the evidence.

So thank you on behalf of the Court, the clients, and their lawyers.

Now, I gave you instructions at the beginning of trial. Let me go through them.

With regard to your ability to speak about what you've done, you are now free to speak about the trial, anything you want to. You're free not to speak.

The only exception -- I don't remember any confidential information being used in this case. So the only exception to your ability to speak about the case is, one, the lawyers in the case cannot contact you and discuss the case.

And number two, you all were in the jury room a long time. I would ask that you not reveal to anyone what you all discussed while you were deliberating. That should remain private between the seven of you, and so that's -- but anything else you want to, you can talk about.

Number two, I asked you not to post anything on social media. You're free to post whatever you want, again, other than about your deliberations.

And finally, I know at 6:30, you all can't wait to get home and start researching about, first, the panels and these lawyers and their clients, me. And so you're free to do that now. I don't imagine that any of you will, but you are free to do that.

Now, I have one final request, which at 6:30, I'm reluctant to make but I will, which is after every trial, it's -- it gives me great honor to be able to come back and thank each of you individually for your service.

If you've had all of this Court that you want and you want to pick up your stuff and just get -- hit the road, it won't offend me. I'll be disappointed I didn't get to thank you in person, but I understand you all have somewhere else to be. And if you need to get gone, that's fine.

But if you would wait for me, I would certainly like to thank each of you in person when I come back to the jury room.

So with that, you are excused.

Oh, one more -- well, this is not going to be a very big deal.

Your jury service is over having served this, but tomorrow is the last day you could be asked

06:25 to serve on this jury, so you're not getting that much
06:25 benefit out of this. But you are -- you will not be
06:25 called back for jury service anytime in the very near
06:25 future in the federal court. I think you've done your
06:25 duty.
06:25 THE BAILIFF: All rise.
06:25 (Jury exited the courtroom.)
06:26 THE COURT: Thank you. You may be
06:26 seated.
06:26 I have a pretty good idea of what it was
06:26 that took them six hours to do now. And I think that
06:26 reflects the great job that the lawyers did on behalf
06:26 of their clients, and so I want to thank the lawyers
06:26 for this week. I thought you all all did a great job
06:26 for your clients.
06:26 I didn't know what the verdict was going
06:26 to be until I read it, which means I think
06:26 everyone -- I think the clients were represented very
06:26 well. And I think the jury had a very hard time with
06:26 this because of the excellent job both sides did.
06:26 Ultimately, someone always wins and someone loses, and
06:27 from my time trying these cases, I was on -- at both
06:27 tables.
06:27 So thank you, all. I hope you all -- I
06:27 have the privilege of having you in my courtroom again,

not immediately but take some time off. But I do hope I get to have you all in my court again at some point.

So I thank you very much. Have a good evening and be safe going home.

THE BAILIFF: All rise.

(Hearing adjourned.)

UNITED STATES DISTRICT COURT)

WESTERN DISTRICT OF TEXAS)

I, Kristie M. Davis, Official Court Reporter for the United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

Certified to by me this 3rd day of October 2024.

/s/ Kristie M. Davis

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06:27